# ASU Cards Weber RR Round 7

## 1NC

### 1

#### A. Interp: War Powers Authority refers to capacities explicitly granted by Congress – that means the aff must restrict authority under the WPR, AUMF, or NDAA

#### 1. “War Powers” refer to Congressional abilities – Presidential CINC powers are distinct

Gallagher 11 served as an F/A-18C Pilot, Air Officer, and F/A-18C/D Flight Instructor in the US Marine Corps operating forces. He worked Security Assistance initiatives for the US European Command and most recently as a Joint Planner in the USEUCOM J3 and J5. Gallagher is currently assigned to the Joint Staff, Pakistan-Afghanistan Coordination Cell (Joseph V. III, *Parameters*, Summer 2011, pp. 23-24, http://strategicstudiesinstitute.army.mil/pubs/parameters/ Articles/2011summer/Gallagher.pdf)

First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder can wield an inordinate amount of power or influence. **The founders carefully crafted constitutional war-making authority** **with** the branch most representative of the people—**Congress**.4 The Federalist Papers No. 51, “The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments,” serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.5 This principle applies in practice to all decisions of considerable national importance. **Specific to** war powers authority**, the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief**.6 This construct designates **Congress, not the president, as the primary decisionmaking body to commit the nation to war**—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the effort. **The Constitution**, on the other hand, **vaguely delegates authority to execute foreign policy. It contains no instructions regarding the use or custody of that power, except to “preserve, protect, and defend the Constitution of the United States**.”7 Alexander Hamilton, known widely as an advocate of executive power, asserted: "The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States."8 Accordingly, the **founders never intended for the military to serve as the nation’s primary agency to interface with the rest of the world or stand as the dominant instrument of foreign policy. So the presidential authority of** Commander-in-Chief does not permit **a president to use the nation’s military simply to execute a president’s foreign policy.**9 Kenneth B. Moss, Undeclared War and the Future of U.S. Foreign Policy, (Baltimore: The Johns Hopkins University Press, 2008), 217.

#### 2. Indefinite Detention means detaining an arrested person without a trial

US LEGAL 13 [US Legal Forms Inc., Indefinite Detention Law and Legal Definition http://definitions.uslegal.com/i/indefinite-detention/]

Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial. It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seems to violate many national and international laws. It also violates human rights laws. Indefinite detention is seen mainly in cases of suspected terrorists who are indefinitely detained.The Law Lords, Britain’s highest court, have held that the indefinite detention of foreign terrorism suspects is incompatible with the Human Rights Act and the European Convention on Human Rights. [Human Rights Watch] In the U.S., indefinite detention has been used to hold terror suspects. The case relating to the indefinite detention of Jose Padilla is one of the most highly publicized cases of indefinite detention in the U.S. In the U.S., indefinite detention is a highly controversial matter and is currently under review. Organizations such as International Red Cross and FIDH are of the opinion that U.S. detention of prisoners at Guantanamo Bay is not based on legal grounds. However, the American Civil Liberties Union is of the view that indefinite detention is permitted pursuant to section 412 of the USA Patriot Act.

#### C. Reasons to prefer

#### 1. Predictable ground

#### Our interpretation limits the aff to 3 definitive congressional acts that authorize presidential action: the NDAA, the AUMF, and the WPR. All negative link arguments stem from congressional retraction of authorization for the President.

#### 2. Explodes the topic – Existing executive assertions of power allow the President to ignore all laws – the aff could pass new restrictions on literally anything

Schwarz, senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, 2007 [Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 153]

Familiar failings from the Cold War era and earlier history returned to haunt the nation in the wake of 9/11. But this time abuses were compounded by a new and dangerous idea. To justify illicit invasions of liberty and privacy, the executive branch's lawyers argued that the president has unlimited power to violate federal statutes. President Bush agreed. Specifically, he asserted under the Constitution a novel authority in the name of "national security" or "military necessity" to disregard permanently any law enacted by Congress. The Administration used this power to justify set-asides of long-standing federal statutes barring torture, indefinite detention, and warrantless spying. In the Cold War, the FBI and the CIA violated the law but hid or denied their actions. After 9/11, government overreaching claimed a legal basis through theories about "executive power." Abuse became official policy and practice of the United States. No sitting president before President Bush asserted or used power under the Constitution to set aside laws wholesale. Such power means a president can ignore statutes passed by Congress whenever he claims that "national security" or "military necessity" is at issue. This claim finds precedent in the seventeenth-century British kings' royal "prerogative" power to "suspend" or "dispense" with laws enacted by Parliament.' But that power, grounded in ideas about the "divine" right of kings, did not survive the English Civil War and the Glorious Revolution of 1688, which ended the Stuart dynasty. Certainly, it did not find its way into our founding documents, the 1776 Declaration of Independence and the Constitution of 1787.

#### D. Topicality is a voting issue for Fairness and Education

#### Process education—this isn't a framework argument, it’s a call for specificity on debating the presidency—it’s a prior question to informed criticism

Mucher, 12 [“Malaise in the Classroom: Teaching Secondary Students about the Presidency” [Stephen Mucher](http://www.bard.edu/academics/faculty/faculty.php?action=details&id=1969) is assistant professor of history education in the Master of Arts in Teaching Program at Bard College, <http://www.hannaharendtcenter.org/?p=7741>]

Contemporary observers of secondary education have appropriately decried the startling lack of understanding most students possess of the American presidency. This critique should not be surprising. In textbooks and classrooms across the country, curriculum writers and teachers offer an abundance of disconnected facts about the nation’s distinct presidencies—the personalities, idiosyncrasies, and unique time-bound crises that give character and a simple narrative arc to each individual president. Some of these descriptions contain vital historical knowledge. Students should learn, for example, how a conflicted Lyndon Johnson pushed Congress for sweeping domestic programs against the backdrop of Vietnam or how a charismatic and effective communicator like Ronald Reagan found Cold War collaboration with Margaret Thatcher and Mikhail Gorbachev. But what might it mean to ask high school students to look across these and other presidencies to encourage more sophisticated forms of historical thinking? More specifically, what might teachers begin to do to promote thoughtful writing and reflection that goes beyond the respective presidencies and questions the nature of the executive office itself? And how might one teach the presidency, in Arendtian fashion, encouraging open dialogue around common texts, acknowledging the necessary uncertainty in any evolving classroom interpretation of the past, and encouraging flexibility of thought for an unpredictable future? By provocatively asking whether the president “matters,” the [2012 Hannah Arendt Conference](http://www.bard.edu/hannaharendtcenter/conference9-12/) provided an ideal setting for New York secondary teachers to explore this central pedagogical challenge in teaching the presidency. Participants in this special writing workshop, scheduled concurrently with the conference, attended conference panels and also retreated to consider innovative and focused approaches to teaching the presidency. Conference panels promoted a broader examination of the presidency than typically found in secondary curricula. A diverse and notable group of scholars urged us to consider the events and historical trends, across multiple presidencies, constraining or empowering any particular chief executive. These ideas, explored more thoroughly in the intervening writing workshops, provoked productive argument on what characteristics might define the modern American presidency. In ways both explicit and implicit, sessions pointed participants to numerous and complicated ways Congress, the judiciary, mass media, U.S. citizens, and the president relate to one another. This sweeping view of the presidency contains pedagogical potency and has a place in secondary classrooms. Thoughtful history educators should ask big questions, encourage open student inquiry, and promote civic discourse around the nature of power and the purposes of human institutions. But as educators, we also know that the aim and value of our discipline resides in place-and time-bound particulars that beg for our interpretation and ultimately build an evolving understanding of the past. Good history teaching combines big ambitious questions with careful attention to events, people, and specific contingencies. Such specifics are the building blocks of storytelling and shape the analogies students need to think through an uncertain future. Jimmy Carter’s oval office speech on July 15, 1979, describing a national “crisis of confidence” presented a unique case study for thinking about the interaction between American presidents and the populations the office is constitutionally obliged to serve. Workshop participants prepared for the conference by watching the [video footage](http://www.youtube.com/watch?v=KCOd-qWZB_g) from this address and reading parts of Kevin Mattson’s [history of the speech](http://www.nytimes.com/2009/07/15/books/excerpt-what-the-heck-mr-president.html). In what quickly became known as the “Malaise Speech,” Carter attempted a more direct and personal appeal to the American people, calling for personal sacrifice and soul searching, while warning of dire consequences if the nation did not own up to its energy dependencies. After Vietnam and Watergate, Carter believed, America needed a revival that went beyond policy recommendations. His television address, after a mysterious 10-day sequestration at Camp David, took viewers through Carter’s own spiritual journey and promoted the conclsions he drew from it. Today, the Malaise Speech has come to symbolize a failed Carter presidency. He has been lampooned, for example, on The Simpsons as our most sympathetically honest and humorously ineffectual former president. In one [episode](http://www.youtube.com/watch?v=D91IlKLtIH8), residents of Springfield cheer the unveiling of his presidential statue, emblazoned with “Malaise Forever” on the pedestal. Schools give the historical Carter even less respect. Standardized tests such as the NY Regents exam ask little if anything about his presidency. The Malaise speech is rarely mentioned in classrooms—at either the secondary or post-secondary levels. Similarly, few historians identify Carter as particularly influential, especially when compared to the leaders elected before and after him. Observers who mention his 1979 speeches are most likely footnoting a transitional narrative for an America still recovering from a turbulent Sixties and heading into a decisive conservative reaction. Indeed, workshop participants used writing to question and debate Carter’s place in history and the limited impact of the speech. But we also identified, through [primary sources](http://www.livingroomcandidate.org/commercials/1976) on the 1976 election and documents around the speech, ways for students to think expansively about the evolving relationship between a president and the people. A quick analysis of the [electoral map](http://en.wikipedia.org/wiki/File%3A1976prescountymap2.PNG) that brought Carter into office reminded us that Carter was attempting to convince a nation that looks and behaves quite differently than today. The vast swaths of blue throughout the South and red coastal counties in New York and California are striking. Carter’s victory map can resemble an electoral photo negative to what has now become a familiar and predictable image of specific [regional alignments](http://www.washingtonpost.com/wp-srv/politics/interactives/campaign08/election/uscounties.html) in the Bush/Obama era. The president who was elected in 1976, thanks in large part to an electorate still largely undefined by the later rise of the Christian Right, remains an historical enigma. As an Evangelical Democrat from Georgia, with roots in both farming and nuclear physics, comfortable admitting his sins in both Sunday School and Playboy, and neither energized by or defensive about abortion or school prayer, Carter is as difficult to image today as the audience he addressed in 1979. It is similarly difficult for us to imagine the Malaise Speech ever finding a positive reception. However, this is precisely what [Mattson](http://www.nytimes.com/2009/08/02/books/review/Bai-t.html) argues. Post-speech weekend polls gave Carter’s modest popularity rating a surprisingly respectable 11-point bump. Similarly, in a year when most of the president’s earlier speeches were ignored, the White House found itself flooded with phone calls and letters, almost universally positive. The national press was mixed and several prominent columnists praised the speech. This reaction to such an unconventional address, Mattson goes on to argue, suggests that the presidency can matter. Workshop participants who attended later sessions heard Walter Russell Mead reference the ways presidents can be seen as either transformative or transactional. In many ways, the “malaise moment” could be viewed as a late term attempt by a transactional president to forge a transformational presidency. In the days leading up to the speech, Carter went into self-imposed exile, summoning spiritual advisors to his side, and encouraging administration-wide soul searching. Such an approach to leadership, admirable to some and an act of desperation to others, defies conventions and presents an odd image of presidential behavior (an idea elaborated on by conference presenter Wyatt Mason). “Malaise” was never mentioned in Carter’s speech. But his transformational aspirations are hard to miss. In a nation that was proud of hard work, strong families, close-knit communities, and our faith in God, too many of us now tend to worship self-indulgence and consumption. Human identity is no longer defined by what one does, but by what one owns. But we've discovered that owning things and consuming things does not satisfy our longing for meaning. We've learned that piling up material goods cannot fill the emptiness of lives which have no confidence or purpose. It is this process—the intellectual act of interpreting Carter and his [in]famous speech as aberrant presidential behavior—that allows teachers and their students to explore together the larger question of defining the modern presidency. And it is precisely this purposeful use of a small number of primary sources that forces students to rethink, through writing and reflection, the parameters that shape how presidents relate to their electorate. In our workshop we saw how case studies, in-depth explorations of the particulars of history, precede productive debate on whether the presidency matters. The forgotten Carter presidency can play a disproportionately impactful pedagogical role for teachers interested in exploring the modern presidency. As any high school teacher knows, students rarely bring an open interpretive lens to Clinton, Bush, or Obama. Ronald Reagan, as the first political memory for many of their parents, remains a polarizing a figure. However, few students or their parents hold strong politically consequential opinions about Carter. Most Americans, at best, continue to view him as a likable, honest, ethical man who is much more effective as an ex-president than he was as president. Workshop participants learned that the initial support Carter received after the Malaise Speech faded quickly. Mattson and some members of the administration now argue that the President lacked a plan to follow up on the goodwill he received from a nation desiring leadership. Reading [Ezra Klein](http://m.newyorker.com/reporting/2012/03/19/120319fa_fact_klein), we also considered the possibility that, despite all the attention educators give to presidential speeches (as primary sources that quickly encapsulate presidential visions), there is little empirical evidence that any public address really makes much of a difference. In either case, Carter’s loss 16 months later suggests that his failures of leadership both transformational and transactional. Did Carter’s speech matter? The teachers in the workshop concluded their participation by attempting to answer this question, working collaboratively to draft a brief historical account contextualizing the 1979 malaise moment. In doing so, we engaged in precisely the type of activity missing in too many secondary school classrooms today: interrogating sources, corroborating evidence, debating conflicting interpretations, paying close attention to language, and doing our best to examine our underlying assumptions about the human condition. These efforts produced some clarity, but also added complexity to our understanding of the past and led to many additional questions, both pedagogical and historical. In short, our writing and thinking during the Arendt Conference produced greater uncertainty. And that reality alone suggests that study of the presidency does indeed matter.

#### Agreement is intrinsic in debate; if there is no agreement on initial terms then debate loses all value

Shively 2k Ruth Lessl Shively 0, Assoc Prof Polisci at Texas A&M, 2000 *Political Theory and Partisan Politics* p. 181-2

The requirements given thus far are primarily negative. The ambiguists must say "no" to—they must reject and limit—some ideas and actions. In what follows, we will also find that they must say "yes" to some things. In particular, they must say "yes" to the idea of rational per­suasion. This means, first, that they must recognize the role of agreement in political contest, or the basic accord that is necessary to discord. The mistake that the ambiguists make here is a common one. The mistake is in thinking that agreement marks the end of contest—that consen­sus kills debate. But this is true only if the agreement is perfect—if there is nothing at all left to question or contest. In most cases, however, our agreements are highly imperfect. We agree on some matters but not on others, on generalities but not on specifics, on principles but not on their applications, and so on. And this kind of limited agreement is the starting condition of contest and debate. As John Courtney Murray writes: We hold certain truths; therefore we can argue about them. It seems to have been one of the corruptions of intelligence by positivism to assume that argument ends when agreement is reached. In a basic sense, the reverse is true. There can be no argument except on the premise, and within a context, of agreement. (Murray 1960, 10) In other words, we cannot argue about something if we are not com­municating: if we cannot agree on the topic and terms of argument or if we have utterly different ideas about what counts as evidence or good argument. At the very least, we must agree about what it is that is being debated before we can debate it. For instance, one cannot have an argument about euthanasia with someone who thinks euthanasia is a musical group. One cannot successfully stage a sit-in if one's target audience simply thinks everyone is resting or if those doing the sitting have no complaints. Nor can one demonstrate resistance to a policy if no one knows that it is a policy. In other words, contest is meaningless if there is a lack of agreement or communication about what is being contested. Resisters, demonstrators, and debaters must have some shared ideas about the subject and/or the terms of their disagree­ments. The participants and the target of a sit-in must share an under­standing of the complaint at hand. And a demonstrator's audience must know what is being resisted. In short, the contesting of an idea presumes some agreement about what that idea is and how one might go about intelligibly contesting it. In other words, contestation rests on some basic agreement or harmony.

### 2

#### CP: The Executive branch of the United States federal government should substantially increase social services for persons living in poverty in the United States by overturning section 4, 5, 6, 7, 8, 9, 10, and 12 of the Prison Litigation Reform Act.

#### Executive orders can solve.

Tichenor 8 (The Forgotten Virtues of Executive Restraint: Liberal Democracy, Prerogative Power, and Unfettered Presidentialism Daniel J. Tichenor Department of Political Science Rutgers University-New Brunswick, http://www.wcfia.harvard.edu/sites/default/files/The%20Forgotten%20Virtues%20of%20Executive%20Restraint%20Tichenor.pdf)

As we have already noted, scholars and ordinary ci tizens alike have celebrated most those presidents who have led the nation decis ively and victoriously through our darkest national security crises. My purpose in t his paper is not to challenge or understate the importance of strong and effective c risis leadership. Issuing a brief in favor of the James Buchanan model of executive impo tence would be an odd and fruitless enterprise (nor do I favor the more competent stric t constructionist conception of Taft). To reiterate our guiding question, the key issue is whether prerogative presidents can forcefully address national security imperatives while also striving to keep unnecessary intrusions on individual or group freedoms to a minimum. Clearly it sometimes may be difficult in the heat of emergencies to distinguish which intrusions are required from those which are not, but our three cases do provide telling evidence that our chief executives often have considerable information to w eigh the trade-offs. The collateral damage of major wars on the homefront may always in clude the lost liberties of innocent persons. But are effective prerogative presidents capable of being attentive to limiting unjustified government intrusions on freedom? When faced with the opportunity to use broad unilateral power in the midst of crises, do t hey uniformly seize it or do they have the capacity to exercise self-control? Lincoln, Wilson, and Franklin Roosevelt provide us with different answers to these questions. Although Lincoln is disparaged by critics past and present as a ruthless dictator, I shall point to evidence that he was mor e guarded in the exercise of executive powers that enervated individual rights than either Wilson or FDR. Presidential greatness, I contend, is not only to be found in de cisive and successful action during crises of the first order (or lasting expansions in the clout and prestige of the executive office), but also in the exercise of self -restraint when the warrants for executive power are at their zenith. To illustrate this point, let me return briefly to Lincoln, Wilson and Franklin Roosevelt, starting with our twentieth-cen tury presidents who demonstrated little if any restraint in their exercise of emerge ncy power.

#### If we win our CP solves, it access their moral framework. That means you default to cost-benefit analysis—even prominent deontologists concede this.

Finnis, 1980

John Finnis, deontologist, teaches jurisprudence and constitutional Law. He has been Professor of Law & Legal Philosophy since 1989,1980, Natural Law and Natural Rights, pg. 111-2

**The sixth requirement** has obvious connections with the fifth, but introduces a new range of problems for practical reason, problems which go to the heart of ‘morality’. For this **is** the requirement **that one bring about good in the world** (in one’s own life and the lives of others) **by actions that are efficient** for their (reasonable) purpose (s). **One must not waste** one’s **opportunities by using inefficient methods**. One’s **actions should be judged by their effectiveness**, by their fitness for their purpose, by their utility, **their consequences… There is a wide range of contexts in which it is possible and only reasonable to calculate, measure, compare, weigh, and assess the consequences of alternative decisions**. Where a choice must be made it is reasonable to prefer human good to the good of animals. Where a choice must be made it is reasonable to prefer basic human goods (such as life) to merely instru­mental goods (such as property). **Where damage is inevitable, it is reasonable to prefer** stunning to wounding, wounding to maiming, maiming to death: i.e. **lesser rather than greater damage** to one-and-the-same basic good in one-and-the-same instantiation. **Where one way of participating in a human good includes** both **all the good** aspects and **effects of its alternative, and more, it is reasonable to prefer that way: a remedy that both relieves pain and heals is to be preferred to the one that merely relieves pain**. Where a person or a society has created a personal or social hierarchy of practical norms and orienta­tions, through reasonable choice of commitments, **one can** in many cases **reasonably measure the benefits and disadvantages of alternatives**. (Consider a man who ha decided to become a scholar, or a society that has decided to go to war.) Where one ~is considering objects or activities in which there is reasonably a market, the market provides a common de­nominator (currency) and enables a comparison to be made of prices, costs, and profits. Where there are alternative techniques or facilities for achieving definite, objectives, cost— benefit analysis will make possible a certain range of reasonable comparisons between techniques or facilities. Over a wide range of preferences and wants, it is reasonable for an individual or society to seek o maximize the satisfaction of those preferences or wants.

### 3

#### Judicial deference is high – there’s strict adherence to the political question doctrine

Bradley 9-2 (Curtis A., William Van Alstyne Professor of Law – Duke Law School, “War Powers, Syria, and Non-Judicial Precedent,” Lawfare Blog, 2013, http://www.lawfareblog.com/2013/09/war-powers-syria-and-non-judicial-precedent/)

As an initial matter, we need to bracket the issue of whether Obama’s action will weaken his own power as a political matter. This is a complicated issue: on the one hand, it may signal weakness both to Congress and to other nations; on the other hand, if he obtains congressional authorization, he may be in an ultimately stronger political position, as Jack Goldsmith has pointed out. As I understand it, the claim being made by Spiro, Rothkopf, and others is that the power of the presidency more generally is being weakened. How might this happen? Not through an influence on judicial doctrine: Although courts sometimes take account of historic governmental practices when assessing the scope of presidential authority, they have consistently invoked limitations on standing and ripeness, as well as the political question doctrine, to avoid addressing constitutional issues relating to war powers. In the absence of judicial review, what is the causal mechanism by which the “precedent” of Obama seeking congressional authorization for the action in Syria could constrain future presidential action? When judicial review is unavailable, the most obvious way in which the President is constrained is through the political process—pressure from Congress, the public, his party, etc. In an extreme case, this pressure could take the form of impeachment proceedings, but it does not take such an extreme case for the pressure to have a significant effect on presidential decisionmaking. Indeed, it is easy to think of political considerations that might have motivated Obama to go to Congress with respect to Syria.

#### Reducing court deference breaks the political question doctrine

Lederman 11 (Martin, Professor of Law – Georgetown University Law Center, “War, Terror, and the Federal Courts, Ten Years After 9/11: Conference\*: Association of American Law Schools' Section on Federal Courts Program at the 2012 AALS Annual Meeting in Washington, D.C.,” American University Law Review, June, 61 Am. U.L. Rev. 1253, Lexis)

Number two: Numerous very important, contested, hotly debated topics have arisen in the last ten years, many of them in the Bush Administration, involving for example interrogation techniques, the scope of detention authority, habeas review, military commissions, targeted killings,and the use of force more broadly. On some of these questions, the federal courts - and the Supreme Court in particular - have had quite a lot to say; and on others, not so much, at least in part because of several different federal courts doctrines that prevent the courts from speaking too much about those. You're all familiar with standing limits, political questions, state secrets, etc. We're going to focus particularly on a couple of them, which are immunity doctrines and the weakening of the Bivens n2 and state court sorts of causes of action. We will also discuss the fact that there are many people who think the federal courts have become too involved at supervising and resolving substantive questions involving the political branches, including some of Judge Kavanaugh's colleagues, who have been particularly vocal about that, engaging in what appears to be a form of resistance to the Supreme Court's Boumediene n3 decision. By contrast, many other people think the courts have not been nearly involved enough at resolving some of the unresolved questions about the scope of interrogation and detention and military commissions and the like, that might be lingering from the last administration, or occurring now in the new administration, such as with respect to use of force. So that's the second broad topic - whether the federal courts have been too timid or too aggressive in this area.

#### Setting a precedent against the PQD spills over to climate change cases---litigants are turning to the Courts now and asking them to abrogate the PQD

Tribe, the Carl M. Loeb University Professor, Harvard Law School, ‘10

[Laurence H., Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>]

Two sets of problems, one manifested at a microcosmic level and the other about as macrocosmic as imaginable, powerfully illustrate these propositions. Not coincidentally, both stem from concerns about temperature and its chemical and climactic effects, concerns playing an increasingly central role in the American policy process. As those concerns have come to the fore, courts have correspondingly warmed to the idea of judicial intervention, drawn by the siren song of making the world a better place and fueled by the incentives for lawyers to convert public concern into private profit. In both the fuel temperature and global warming cases, litigants, at times justifying their circumvention of representative democracy by pointing to the slow pace of policy reform, have turned to the courts. By donning the cloak of adjudication, they have found judges for whom the common law doctrines of unjust enrichment, consumer fraud, and nuisance appear to furnish constitutionally acceptable and pragmatically useful tools with which to manage temperature’s effects. Like the proverbial carpenter armed with a hammer to whom everything looks like a nail, those judges are wrong. For both retail gasoline and global climate, the judicial application of common law principles provides a constitutionally deficient—and structurally unsound—mechanism for remedying temperature’s unwanted effects. ¶ It has been axiomatic throughout our constitutional history that there exist some questions beyond the proper reach of the judiciary. In fact, the political question doctrine originates in no less august a case than Marbury v. Madison, where Chief Justice Marshall stated that “[q]uestions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”1 Well over a century after that landmark ruling, the Supreme Court, in Baker v. Carr, famously announced six identifying characteristics of such nonjusticiable political questions, which, primarily as a “function of the separation of powers,” courts may not adjudicate.2 Of these six characteristics, the Court recently made clear that two are particularly important: (1) the presence of “a textually demonstrable constitutional commitment of the issue to a coordinate political department;” and (2) “a lack of judicially discoverable and manageable standards for resolving it.”3 ¶ The spectrum of nonjusticiable political questions in a sense spans the poles formed by these two principles. At one pole, the Constitution’s specific textual commitments shield issues expressly reserved to the political branches from judicial interference. At the other pole lie matters not necessarily reserved in so many words to one of the political branches but nonetheless institutionally incapable of coherent and principled resolution by courts acting in a truly judicial capacity; such matters are protected from judicial meddling by the requirement that “judicial action must be governed by standard, by rule” and by the correlative axiom that “law pronounced by the courts must be principled, rational, and based upon reasoned distinctions.”4¶ At a deeper level, however, the two poles collapse into one. The reason emerges if one considers issues that courts are asked to address involving novel problems the Constitution’s framers, farsighted though they were, could not have anticipated with sufficient specificity to entrust their resolution to Congress or to the Executive in haec verba. A perfect exemplar of such problems is the nest of puzzles posed by humaninduced climate change. When matters of that character are taken to court for resolution by judges, what marks them as “political” for purposes of the “political question doctrine” is not some problem-specific language but, rather, the demonstrable intractability of those matters to principled resolution through lawsuits. And one way to understand that intractability is to view it as itself marking the Constitution’s textual, albeit broadly couched, commitment of the questions presented to the processes we denominate “legislative” or “executive”—that is, to the pluralistic processes of legislation and treaty-making rather than to the principle-bound process of judicially resolving what Article III denominates “cases” and “controversies.” In other words, the judicial unmanageability of an issue serves as powerful evidence that the Constitution’s text reserves that issue, even if broadly and implicitly, to the political branches.5¶ It has become commonplace that confusion and controversy have long distinguished the doctrine that determines, as a basic matter of the Constitution’s separation of powers, which questions are “political” in the specific sense of falling outside the constitutional competence of courts and which are properly justiciable despite the “political” issues they may touch. But that the principles in play have yet to be reduced to any generally accepted and readily applied formula cannot mean that courts are simply free to toss the separation of powers to the winds and plunge ahead in blissful disregard of the profoundly important principles that the political question doctrine embodies. Unfortunately, that appears to be just what some courts have done in the two temperature-related cases—one involving hot fuels, the other a hot earth— that inspired this publication. In the first, a court allowed a claim about measuring fuels to proceed despite a constitutional provision specifically reserving the issue to Congress. In the second—a case in which the specific issue could not have been anticipated, much less expressly reserved, but in which the only imaginable solutions clearly lie beyond judicial competence—a court, rather than dismissing the case as it ought to have done, instead summarily dismissed the intractable obstacles to judicial management presented by climate change merely because it was familiar with the underlying cause of action. As this pair of bookend cases demonstrates, the political question doctrine is feeling heat from both directions.

#### That crushes global coordination necessary to solve climate change.

Tribe, the Carl M. Loeb University Professor, Harvard Law School, ‘10

[Laurence H., Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>]

But that being said, if the Second Circuit was implying that such claims are justiciable in part because they are relatively costless, it was wrong again. In the wake of the recent Copenhagen climate negotiations, America is at a crossroads regarding its energy policy. At Copenhagen, the world—for the first time including both the United States and China—took a tremulous first step towards a comprehensive and truly global solution to climate change.44 By securing a modicum of international consensus—albeit not yet with binding commitments—President Obama laid the foundation for what could eventually be a groundbreaking congressional overhaul of American energy policy, an effort that will undoubtedly be shaped by considerations as obviously political as our energy independence from hostile and unreliable foreign regimes and that will both influence and be influenced by the delicate state of international climate negotiations.45¶ Against this backdrop, courts would be wise to heed the conclusion of one report that what “makes climate change such a difficult policy problem is that decisions made today can have significant, uncertain, and difficult to reverse consequences extending many years into the future."46 This observation is even more salient given that America—and the world—stand at the precipice of major systemic climate reform, if not in the coming year then in the coming decade. It would be disastrous for climate policy if, as at least one commentator has predicted,47 courts were to “beat Congress to the punch” and begin to concoct common law “solutions” to climate change problems before the emergence of a legislative resolution. Not only does judicial action in this field require costly and irreversible technological change on the part of defendants, but the prior existence of an ad hoc mishmash of common law regimes will frustrate legislators’ attempts to design coherent and systematic marketbased solutions.48 Indeed, both emissions trading regimes and carbon taxes seek to harness the fungibility of GHG emissions by creating incentives for reductions to take place where they are most efficient. But if courts were to require reductions of randomly chosen defendants—with no regard for whether they are efficient reducers— they would inhibit the effective operation of legislatively-created, market-based regimes by prematurely and artificially constricting the size of the market. And as one analyst succinctly put it before Congress, “[a]n insufficient number of participants will doom an emissions trading market.”49¶ There is no doubt that the “Copenhagen Accord only begins the battle” against climate change, as diplomats, bureaucrats, and legislators all now begin the lengthy struggle to turn that Accord’s audacious vision into concrete reality.50 But whatever one’s position in the debate between emissions trading and carbon taxes, or even in the debate over the extent or indeed the reality of anthropogenic climate change, one thing is clear: legislators, armed with the best economic and scientific analysis, and with the capability of binding, or at least strongly incentivizing, all involved parties, are the only ones constitutionally entitled to fight that battle. ¶ CONCLUSION ¶ Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching.51 No doubt the standing doctrine could theoretically suffice to prevent some of the most audacious judicial sallies into the political thicket, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But when courts lose sight of the important limitations that the political question doctrine independently imposes upon judicial power–even where standing problems are at low ebb, as with the Motor Fuel case–then constitutional governance, and in turn the protection of individual rights and preservation of legal boundaries, suffer. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine’s bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. It is not only the climate of the globe that carries profound implications for our future; it is also the climate of the times and its implications for how we govern ourselves.

#### Warming is real, anthropogenic and causes extinction

Flournoy 12 -- Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center. Don Flournoy is a PhD and MA from the University of Texas, Former Dean of the University College @ Ohio University, Former Associate Dean @ State University of New York and Case Institute of Technology, Project Manager for University/Industry Experiments for the NASA ACTS Satellite, Currently Professor of Telecommunications @ Scripps College of Communications @ Ohio University (Don, "Solar Power Satellites," January, Springer Briefs in Space Development, Book, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 )

## 4

#### 1. A focus on discourse and social location is an abandonment of real change – we must use a materialist focus to solve oppression

Cloud 1 (Dana L. Cloud, Associate Professor, Communication Studies UT Austin, “The Affirmative Masquerade,” American Communication Journal, Volume 4, Issue 3, Spring 2001, <http://www.acjournal.org/holdings/vol4/iss3/special/cloud.htm>)

At the very least, however, it is clear that **poststructuralist discourse theories have left behind** some of **historical materialism’s most valuable conceptual tools for** any **theoretical and critical practice that aims at informing practical, oppositional political activity on behalf of** historically exploited and **oppressed groups**. As Nancy Hartsock (1983, 1999) and many others have argued (see Ebert 1996; Stabile, 1997; Triece, 2000; Wood, 1999), **we need to retain concepts such as standpoint epistemology** (wherein truth standards are not absolute or universal but arise from the scholar’s alignment with the perspectives of particular classes and groups) **and fundamental, class-based interests** (as opposed to understanding class as just another discursively-produced identity). We need extra-discursive reality checks on ideological mystification and economic contextualization of discursive phenomena. Most importantly, **critical scholars bear the obligation to explain the origins and causes of exploitation and oppression in order** better **to inform the fight against them**.  In poststructuralist discourse theory, **the "retreat from class**" (Wood, 1999) **expresses an unwarranted pessimism about what can be accomplished in late capitalism with regard to** understanding and **transforming** system and **structure at the level of the economy and the state**. **It** substitutes meager cultural freedoms for macro-level social transformation even **as millions of people around the world feel the global reach of capitalism more deeply than ever before**. At the core of the issue is a debate across the humanities and social sciences with regard to whether we live in a "new economy," an allegedly postmodern, information-driven historical moment in which, it is argued, organized mass movements are no longer effective in making material demands of system and structure (Melucci, 1996). In suggesting that global capitalism has so innovated its strategies that there is no alternative to its discipline, arguments proclaiming "a new economy" risk inaccuracy, pessimism, and conservatism (see Cloud, in press). While a thoroughgoing summary is beyond the scope of this essay, there is a great deal of evidence against claims that capitalism has entered a new phase of extraordinary innovation, reach, and scope (see Hirst and Thompson, 1999).  Furthermore, both class polarization (see Mishel, Bernstein, and Schmitt, 2001) and the ideological and management strategies that contain class antagonism (see Cloud, 1998; Parker and Slaughter, 1994) still resemble their pre-postmodern counterparts. A recent report of the Economic Policy Institute concludes that in the 1990s, inequality between rich and poor in the U.S. (as well as around the world) continued to grow, in a context of rising worker productivity, a longer work week for most ordinary Americans, and continued high poverty rates.  Even as the real wage of the median CEO rose nearly 63 percent from 1989, to 1999, more than one in four U.S. workers lives at or below the poverty level. Among these workers, women are disproportionately represented, as are Black and Latino workers. (Notably, unionized workers earn nearly thirty percent more, on average, than non-unionized workers.) Meanwhile, Disney workers sewing t-shirts and other merchandise in Haiti earn 28 cents an hour. Disney CEO Michael Eisner made nearly six hundred million dollars in 1999--451,000 times the wage of the workers under his employ (Roesch, 1999). According to United Nations and World Bank sources, several trans-national corporations have assets larger than several countries combined. Sub-Saharan Africa and the Russian Federation have seen sharp economic decline, while assets of the world’s top three billionaires exceed the GNP of all of the least-developed countries and their combined population of 600 million people (Shawki and D’Amato, 2000, pp. 7-8).  **In this context of a real** (and clearly bipolar) **class divide in** late **capitalist society,** the postmodern party is a masquerade ball, in which theories claiming to offer ways toward emancipation and progressive critical practice in fact **encourage scholars** and/as activists **to abandon** any **commitment to crafting oppositional political blocs** with instrumental and perhaps revolutionary potential. Instead, on their arguments, we must recognize agency as an illusion of humanism and settle for playing with our identities in a mood of irony, excess, and profound skepticism. Marx and Engels’ critique of the Young Hegelians applies equally well to the postmodern discursive turn: "They are only fighting against ‘phrases.’ They forget, however, that to these phrases they themselves are only opposing other phrases, and that they are in no way combating the real existing world when they are merely combating the phrases of this world" (1976/1932, p. 41).  Of course, the study of "phrases" is important to the project of materialist critique in the field of rhetoric. The point, though, is to explain the connections between phrases on the one hand and economic interests and systems of oppression and exploitation on the other. Marxist ideology critique, understands that classes, motivated by class interest, produce rhetorics wittingly and unwittingly, successfully and unsuccessfully. Those rhetorics are strategically adapted to context and audience. Yet **Marxist theory is not naïve in** its **understanding** of intention or individual **agency**. Challenging individualist humanism, **Marxist** ideology **critics regard people as "products of circumstances**" (and changed people as products of changed circumstances; Marx, 1972b/1888, p. 144).  Within this understanding, **Marxist** ideology **critics can describe and evaluate cultural discourses** such as that of racism or sexism **as strategic and complex expressions of both their moment in history and of their class basis**. Further, this mode of critique seeks to explain both why and how social reality is fundamentally, systematically oppressive and exploitative, exploring not only the surface of discourses but also their often-complex and multi-vocal motivations and consequences. As Burke (1969/1950) notes, **Marxism is both a method of rhetorical criticism and a rhetorical formation** itself (pp. 109-110). There is no pretense of neutrality or assumption of transcendent position for the critic.  Teresa Ebert (1996) summarizes the purpose of materialist ideology critique:   Materialist critique is a mode of knowing that inquires into what is not said, into the silences and the suppressed or missing, in order to uncover the concealed operations of power and the socio-economic relations connecting the myriad details and representations of our lives. It shows that apparently disconnected zones of culture are in fact materially linked through the highly differentiated, mediated, and dispersed operation of a systematic logic of exploitation. In sum, materialist critique disrupts **‘what is’ to explain how social differences**--specifically gender, race, sexuality, and class--**have been systematically produced and continue to operate within regimes of exploitation, so that we can change them. It is the means for** producing transformative knowledges**.** (p. 7)

#### 2. The logic of capitalism results in extinction through the creation of ecological catastrophe and violent imperialist wars that will turn nuclear

Foster 5 [John Bellamy, Monthly Review, September, Vol. 57, Issue 4, “Naked Imperialism”, <http://www.monthlyreview.org/0905jbf.htm>]

From the longer view offered by a historical-materialist critique of capitalism, the direction that would be taken by U.S. imperialism following the fall of the Soviet Union was never in doubt. Capitalism by its very logic is a globally expansive system. The contradiction between its transnational economic aspirations and the fact that politically it remains rooted in particular nation states is insurmountable for the system. Yet, ill-fated attempts by individual states to overcome this contradiction are just as much a part of its fundamental logic. In present world circumstances, when one capitalist state has a virtual monopoly of the means of destruction, the temptation for that state to attempt to seize full-spectrum dominance and to transform itself into the de facto global state governing the world economy is irresistible. As the noted Marxian philosopher István Mészáros observed in Socialism or Barbarism? (2001)—written, significantly, before George W. Bush became president: “[W]hat is at stake today is not the control of a particular part of the planet—no matter how large—putting at a disadvantage but still tolerating the independent actions of some rivals, but the control of its totality by one hegemonic economic and military superpower, with all means—even the most extreme authoritarian and, if needed, violent military ones—at its disposal.” The unprecedented dangers of this new global disorder are revealed in the twin cataclysms to which the world is heading at present: nuclear proliferation and hence increased chances of the outbreak of nuclear war, and planetary ecological destruction. These are symbolized by the Bush administration’s refusal to sign the Comprehensive Test Ban Treaty to limit nuclear weapons development and by its failure to sign the Kyoto Protocol as a first step in controlling global warming. As former U.S. Secretary of Defense (in the Kennedy and Johnson administrations) Robert McNamara stated in an article entitled “Apocalypse Soon” in the May–June 2005 issue of Foreign Policy: “The United States has never endorsed the policy of ‘no first use,’ not during my seven years as secretary or since. We have been and remain prepared to initiate the use of nuclear weapons—by the decision of one person, the president—against either a nuclear or nonnuclear enemy whenever we believe it is in our interest to do so.” The nation with the greatest conventional military force and the willingness to use it unilaterally to enlarge its global power is also the nation with the greatest nuclear force and the readiness to use it whenever it sees fit—setting the whole world on edge. The nation that contributes more to carbon dioxide emissions leading to global warming than any other (representing approximately a quarter of the world’s total) has become the greatest obstacle to addressing global warming and the world’s growing environmental problems—raising the possibility of the collapse of civilization itself if present trends continue. The United States is seeking to exercise sovereign authority over the planet during a time of widening global crisis: economic stagnation, increasing polarization between the global rich and the global poor, weakening U.S. economic hegemony, growing nuclear threats, and deepening ecological decline. The result is a heightening of international instability. Other potential forces are emerging in the world, such as the European Community and China,that could eventually challenge U.S. power, regionally and even globally. Third world revolutions, far from ceasing, are beginning to gain momentum again, symbolized by Venezuela’s Bolivarian Revolution under Hugo Chávez. U.S. attempts to tighten its imperial grip on the Middle East and its oil have had to cope with a fierce, seemingly unstoppable, Iraqi resistance, generating conditions of imperial overstretch. With the United States brandishing its nuclear arsenal and refusing to support international agreements on the control of such weapons, nuclear proliferation is continuing. New nations, such as North Korea, are entering or can be expected soon to enter the “nuclear club.” Terrorist blowback from imperialist wars in the third world is now a well-recognized reality, generating rising fear of further terrorist attacks in New York, London, and elsewhere. Such vast and overlapping historical contradictions, rooted in the combined and uneven development of the global capitalist economy along with the U.S. drive for planetary domination, foreshadow what is potentially the most dangerous period in the history of imperialism. The course on which U.S and world capitalism is now headed points to global barbarism—or worse. Yet it is important to remember that nothing in the development of human history is inevitable. There still remains an alternative path—the global struggle for a humane, egalitarian, democratic, and sustainable society. The classic name for such a society is “socialism.” Such a renewed struggle for a world of substantive human equality must begin by addressing the system’s weakest link and at the same time the world’s most pressing needs—by organizing a global resistance movement against the new naked imperialism.

#### 3. Vote negative to adopt the historical material criticism of the 1NC - historical analysis of the material conditions of capital is the only way to break free from is contradictions and social inequalities it causes

Tumino 1 (Steven, teaches at the City University of New York, Spring, What is Orthodox Marxism and Why it Matters Now More Than Ever Before)

Any effective political theory will have to do at least two things: it will have to offer an integrated understanding of social practices and, based on such an interrelated knowledge, offer a guideline for praxis. My main argument here is that among all contesting social theories now, only Orthodox Marxism has been able to produce an integrated knowledge of the existing social totality and provide lines of praxis that will lead to building a society free from necessity. But first I must clarify what I mean by Orthodox Marxism. Like all other modes and forms of political theory, the very theoretical identity of Orthodox Marxism is itself contested—not just from non-and anti-Marxists who question the very "real" (by which they mean the "practical" as under free-market criteria) existence of any kind of Marxism now but, perhaps more tellingly, from within the Marxist tradition itself. I will, therefore, first say what I regard to be the distinguishing marks of Orthodox Marxism and then outline a short polemical map of contestation over Orthodox Marxism within the Marxist theories now. I will end by arguing for its effectivity in bringing about a new society based not on human rights but on freedom from necessity. I will argue that to know contemporary society—and to be able to act on such knowledge—one has to first of all know what makes the existing social totality. I will argue that the dominant social totality is based on inequality—not just inequality of power but inequality of economic access (which then determines access to health care, education, housing, diet, transportation, . . . ). This systematic inequality cannot be explained by gender, race, sexuality, disability, ethnicity, or nationality. These are all secondary contradictions and are all determined by the fundamental contradiction of capitalism which is inscribed in the relation of capital and labor. All modes of Marxism now explain social inequalities primarily on the basis of these secondary contradictions and in doing so—and this is my main argument—legitimate capitalism. Why? Because such arguments authorize capitalism without gender, race, discrimination and thus accept economic inequality as an integral part of human societies. They accept a sunny capitalism—a capitalism beyond capitalism. Such a society, based on cultural equality but economic inequality, has always been the not-so-hidden agenda of the bourgeois left—whether it has been called "new left," "postmarxism," or "radical democracy." This is, by the way, the main reason for its popularity in the culture industry—from the academy (Jameson, Harvey, Haraway, Butler,. . . ) to daily politics (Michael Harrington, Ralph Nader, Jesse Jackson,. . . ) to. . . . For all, capitalism is here to stay and the best that can be done is to make its cruelties more tolerable, more humane. This humanization (not eradication) of capitalism is the sole goal of ALL contemporary lefts (marxism, feminism, anti-racism, queeries, . . . ). Such an understanding of social inequality is based on the fundamental understanding that the source of wealth is human knowledge and not human labor. That is, wealth is produced by the human mind and is thus free from the actual objective conditions that shape the historical relations of labor and capital. Only Orthodox Marxism recognizes the historicity of labor and its primacy as the source of all human wealth. In this paper I argue that any emancipatory theory has to be founded on recognition of the priority of Marx's labor theory of value and not repeat the technological determinism of corporate theory ("knowledge work") that masquerades as social theory.

#### 4. The driving factor in the prison industrial complex in America is capitalism – it’s the most efficient mode of disciplining the poor and racially stratifying the working class.

Parenti 2k (Christian, Activist, “Beyond the Prison Industrial Complex: Class warfare from above”, CovertAction Quarterly, <http://globalresearch.ca/articles/PAR108B.html>, RSR)

What drives incarceration and the massive build-up in American criminal justice? Are specific corporate interests taking control of criminal justice policy, as is often the case with military policy? Has the Military-lndustrial Complex, with the end of the Cold War, transmognfied into the Prison Industrial Complex (PIC)? This "prison as pentagon" argument has assumed the mantle of common sense among many left pundits and activists. The PIC explanation generally cites three ways in which incarceration directly bolsters capitalism. They are: the privatization of prisons and prison-related services, the exploitation of prison labor by private firms, and the broad Keynesian stimulus (i.e., job creation) of criminal justice spending. All of these features are important, but none of them-alone or together-explains why we are headed for what Jerome Miller calls a ``gulag state." Perhaps a more useful analysis of the cops-courts-and-big house buildup requires a broader, more historically rooted class analysis that looks not just at bad corporations but at the structure of American capitalism more generally Prison Labor Critics of the Prison Industrial Complex focus much of their attention on prison labor: We hear that incarceration is increasingly driven by profit hungry firms looking for cheap labor. In making this point speakers or writers will reel off a sinner's list of familiar implicated corporate names: Microsoft, Starbucks, Victoria's Secret and TWA. The phenomenon looks to be a mile wide, but in reality it's only an inch deep. Most of the typically named culprits have engaged prison labor only via subcontractors who, in turn, often have only sporadic contracts with prisons. The moral stain remains: Leasing convicts is leasing convicts. But we need to re-calibrate our understanding of what's going on and look closely at the facts. Nationwide only 2,600 prisoners work for private firms 2 Why is this? Because capitalists don't like the invasive, slow, overbearing environment of prisons. Guards may approve of "making convicts pay" but in practice they regularly interrupt production to strip-search, count, and lock away the convict employees. Nor are many big firms willing to risk the bad press associated with exploiting prisoners. For example, Montgomery Ward's charter pledges that the company will not use child, slave, or convict labor. Finally, why hire convicts at minimum wage-corporations have to pay prisons minimum wage even if the inmate employees only receive pennies per hour-when there is an overabundance of desperate, often mi litarily disciplined, workers in the free world. But that's just the private sector, what about the State? After all, most convict laborers are employed by state-owned "prison industries" such as the California Department of Corrections Prison Industries Authority (PIA) or the Federal Government's Unicor, which employs about 20,000 inmates. Impressive numbers, and one would be excused for thinking that someone must be making money hand over fist. However Unicor-like the many parallel ventures owned by the states-is an economic basket case that would shortly collapse if ever forced to compete with the private sector. Unicor products provided to the Department of Defense, on average, cost 13 percent more than the same goods supplied by private firms. U.S. Navy officials say that, compared to the open market, Unicor's "product is inferior, costs more and takes longer to procure." The federal prison monopoly delivers 42 percent of its orders late, compared to an industry-wide average delinquency rate of only 6 percent. A 1993 government report found that Unicor wire sold to the military failed at nearIy twice the rate of the military's next worst supplier. "The stuff was poor quality," said Derek Vander Schaaf, the Pentagons Deputy Inspector General, adding: "If you can't compete at 50 cents an hour for labor, guys, come on." Most state owned prison industry authorities (PlAs) are just as bad: twenty-five percent of them reported net losses in 1994. But even this unflattering number is optimistically distorted, because many PlAs that boast profits in their annual reports fail to disclose the massive subsidies they receive. For example, California's PIA claims to be in the black, but state auditors tell a different story: In 1998 the PIA employed 7,000 of the state's 155,000 prisoners in everything from dairy farming to computer refurbishing, and operated with the usual pampering of guaranteed markets and obscenely low wages. But, like Unicor, the PIA was unable even to meet its costs. Despite posting a "profit" the PIA is on life support, receiving "operating subsidies" and capital outlay funding from the state worth more than $90 million. I he same story can be found in state after state. Why the inefficiency? In part because convicts resent being used as virtual slaves and thus drag their feet, steal supplies, and commit sabotage nonstop. One former federal inmate told me that his "cellie" ended each workday at a Unicor shop with a celebratory calculation of how much equipment and material he had destroyed, thrown or stolen. As the former prisoner put it, "It was all waste, all the time." Private Prisons Another player in the matrix of interests referred to as the prison industrial complex is the fast-growing and powerful private prison industry which now controls around 10 percent of all U.S. prison beds. Though private jailers are generally profitable, they don't lower the costs of incarceration for state governments. What savings are achieved through corner cutting- that is: removing all amenities and services and hiring unqualified guards-is usually absorbed by the company as profit. Already this modus operandi of the bottom line is showing itself to be detrimental for the long-term profitability of some big private jailers, as we will see below. Through assiduous cultivation of state officials, the private jailers are increasingly active in shaping criminal justice policy, but their partnerships with state governments also face problems. Recent events have unveiled private jailers as cheats, liars and major political liabilities. The biggest of the most recent blemishes on the private gulag's image was the mass escape at Corrections Corporation of America's Youngstown, Ohio, prison. That joint-supposed to be a medium security lockup-was a hyper-violent overcrowded facility illegally packed with maximum security inmates from D.C. CCA's invincibility crumbled with the news that six very angry young men from Washington, D.C., had cut open the prison's chain-link fence, crossed an electrified barrier, plowed through yards of razor wire and were now at large among the good people of Youngstown. For almost a week, regular police, tactical squads, canine teams, and helicopters combed an ever widening circle around the prison in search of the runaways. One by one the cops busted the desperate, exhausted escapees, some of whom had been badly wounded by the razor wire. The last runaway inmate, Vincent Smith, was finally taken down in the backyard of Susie Ford's house. A 54-year-old grandmother of three living on the outskirts of Youngstown, Ms. Ford got the news live-when her frenetic sister telephoned advising her to turn on the television. "That's our building! That's our building!" Indeed it was. And the Ford sisters watched their screens in amazement as police swarmed through the shrubs out back. This and a slew of other "problems" have finally undermined the once unstoppable CCA. A former Wall Street darling, and dubbed "a theme stock for the nineties," CCAs stock price has tumbled to half its peak value. Other private lockup firms are facing the same crisis. Recently the number two private jailer, Wackenhut Corporation, saw several of its facilities rocked by riots. In mid-November last year, at the Taft Federal Correctional Institution, hundreds of inmates, angry about lousy food, smashed windows, televisions, and tables in the federal system's only full-sized private prison. Thirty minutes of tear gas, rubber bullets and flash bang grenades ended the uprising. More serious was the August rioting in two of Wackenhut's New Mexico penitentiaries. In one of those clashes a guard was shanked to death by ten inmates. On top of all that 12 former Wackenhut employees are under indictment in Austin, Texas. And much like CCA, the company ended the year with its stock heading south-down 60 percent from the previous season. So private prison has grown fast but its boom days may be over as politicians-even Republicans- are turning against for-profit lockups p2 Thus it would seem that private prisons are not pushing criminal justice policy in the way that arms manufacturers do with defense policy Working The Crackdown There is one way in which criminal justice as a whole is coming to resemble the military-industrial complex. While the estimated spending on prisons overall is $30 billion annually, the overall tab on police, courts, prosecutors, probation, parole, bail bonds, bounty hunting, drug treatment and prison is estimated to be as high as $150 billion annually. That's roughly half the Pentagon's budget, not counting the billions in military spending that are hidden within the Department of Energy So there is definitely a broad Keynesian stimulus effect from the crackdown; the criminal justice system is host to a raft of parasitic job categories that range from stenographer and janitor, to judge and executioner. But other than prosecutors nationwide and prison guards in California, few of these interest groups are very organized or do much to create new law and order politics. What about economically cast-off regions, places that once subsisted thanks to military bases or now dead smokestack industries? We hear that many such regions are resurrected, phoenix-like, by the prosperity of prison spending. A closer look at the new prison towns complicates that picture. That this has proven to be an illusion is no better illustrated than in California's Central Valley In the last 15 years, California spent $4.2 billion building 23 new prisons. A recent analysis of the economic impact of the eight prisons surrounding Fresno reveals a junkyard of broken promises and falsely optimistic economic projections. First and foremost, the vast majority of the 8,000 new prison-related jobs haven't gone to residents in the economically depressed little prison towns. Nor has the $2 billion spent on prison construction in California over the last 15 years, or the half-billion dollars annually shelled out to meet prison payrolls, translated into a wave of new houses, restaurants or stores in the states' impoverished lock-up regions. In Corcoran-where more than half of the town's population is incarcerated in a massive complex of two penitentiaries, which may add a third one soon-800 job-seekers took civil-service placement tests for just two prison staff positions. The town's unemployment rate is still 15 percent just as it was a year before the first prison opened in 1988. According to estimates from the state and the prison guards' union, only 7 to 9 percent of the prison jobs in the Central Valley go to people living in prison towns. Thanks to the massive freeways and California's all-powerful car culture, most staff and guards commute from the region's major cities: Fresno, Visalia, and Bakersfield. In short, prison cannot replace industry. Class War From Above While all of the specific interests mentioned above help explain part of the crackdown, they don't go far enough. Beyond the interlocking corporate interests and the question of job creation and regional economic development there lies the broader and historically deeper question of class and racial control. In many ways the criminal justice build-up is an organically evolving means of managing the class and racial polarization of a restructured American economy At the heart of the matter lies a basic contradiction: Capitalism needs and creates poverty, intentionally through policy and organically through crisis. Yet, capitalism is also always threatened by the poor. These surplus populations help scare working people into obedience and keep wages low. But at the same time the poor (who in a white supremacist system are disproportionately people of color) scare the upper middle classes (who are mostly white). At times the impoverished classes, the dangerous classes, even rebel, demanding justice, burning down the ghetto, or worse yet, organizing themselves into coherent coalitions that can leverage the state for economic redistribution and racial equality From the New Deal in the 1930s through the culmination of the War on Poverty in the 1970s (that's right-it all really came to fruition under Nixon), an ever larger portion of America's cast-off populations were absorbed through ameliorative and co-optive social reforms. Spending on health care, education, urban development and welfare were all expanded. At the same time corporate America came under increased regulation in the areas of health and safety, labor arbitration and environmental pollution. People of color, particularly in agricultural regions, were largely excluded from many of these reforms and managed the old fashioned way-via brute force. Nonetheless, by the late sixties America's burgeoning social democracy had begun to cause trouble for the owning classes. By the early seventies profits began to shrink and unemployment began to rise but wage demand still increased. In fact labor was in a more militant mood than ever. By the early seventies wildcat strikes had shut the nation's postal system, coal fields, truck industry and railways. From capital's point of view government anti-poverty programs were, shall we say, spoiling the working classes. During one nationwide strike in which 12 unions beat General Electric it was figured that strikers had collected $25 million in welfare. And, despite recession in the early seventies, the ratio of quits to layoffs was rising. In short, workers were losing their fear of unemployment and bosses because the nation's incipient social welfare system was taking up the slack and supporting them: the War on Poverty was subsidizing the war against capital. Reagan put an end to all that with: severe recession in the early eighties engineered to put labor back in its place; conservative courts, and a mass assault on all forms of government subsidies to poor and working people (from low-income housing programs, to job training to welfare). All this helped to tip the scales back in capital's favor. Now profits are in recovery while the people, particularly people of color, bleed. But how to control the new surplus populations? In retrospect the ever evolving answer is clear: Racialize poverty via the code of crime, and then hound the victims with police narc squads, SWAT teams, and quality of life enforcement; send the INS to raid their homes; and lock up as many as possible for as long as possible. Thus criminal justice regulates, absorbs, terrorizes, and disorganizes the poor. It also bolsters white supremacy by demonizing, disenfranchising and marginalizing ever larger numbers of brown people. But unlike social democratic/welfare co-option-that other way of managing poverty-anti-crime repression doesn't have the deleterious side effect of economically empowering or at least cushioning the poor and subsidizing their struggles. Nor does the new model of control let loose dangerous notions of racial equality and social inclusion, as did the rhetoric surrounding the New Deal War and the War on Poverty

### Case

#### Must evaluate consequences.

Isaac 02 – Professor of political science at Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD from Yale (Jeffery C., Dissent Magazine, Vol. 49, Iss. 2, “Ends, Means, and Politics,” p. Proquest)

As a result, the most important political questions are simply not asked. **It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response**. **The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression**. This requires us to ask a question that most "peace" activists would prefer not to ask: **What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime?** What means are likely to stop violence and bring criminals to justice? **Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand**. The campus left offers no such account. **To do so would require it to contemplate tragic choices in which moral goodness is of limited utility.** Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics**, in large part,** involves contests **over the distribution and use of** power**. To accomplish** anything **in the political world, one must attend to** the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. **To say this is not to say that power is beyond morality. It is to say that power is** not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, **an unyielding concern with moral goodness** undercuts **political responsibility**. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. **Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then** it is hard to view them as serving any moral good **beyond the clean conscience of their supporters;** (2) **it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice**. This is why, **from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and** (3) **it fails to see that politics is** as much about unintended consequences **as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant**. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; **it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it** undermines politicaleffectiveness**.**

#### Court rulings restricting the president spur massive court stripping – empirics

Stephen **Reinhardt**, Judge, Ninth Circuit Court of Appeals, “The Role of the Judge in the Twenty-First Century: The Judicial Role in National Security,” BOSTON UNIVERSITY LAW REVIEW v. 86, 20**06**, LN.

Archibald Cox - who knew a thing or two about the necessity of government actors being independent - emphasized that an essential element of judicial independence is that "there shall be no tampering with the organization or jurisdiction of the courts for the purposes of controlling their decisions upon constitutional questions." n2 Applying Professor Cox's precept to current events, **we might question whether some recent actions and arguments advanced by the elected branches constitute threats to judicial independence**. **Congress,** for instance, **recently passed the Detainee Treatment Act**. n3 The **Graham-Levin Amendment, which is part of that legislation,** **prohibits any court from hearing or considering habeas petitions filed by aliens detained at Guantanamo Bay**. n4 The Supreme Court has been asked to rule on whether the Act applies only prospectively, or whether it applies to pending habeas petitions as well. It is unclear at this time which interpretation will prevail. n5 But if the Act is ultimately construed as applying to pending appeals, **one must ask whether it constitutes "tampering with the ... jurisdiction of the courts for the purposes of controlling their decisions**," which Professor Cox identified as a key marker of a violation of judicial independence. **All of this**, of course, **is wholly aside from the question of whether Congress and the President may strip the courts of such jurisdiction prospectively**. And **it is**, of course, also **wholly apart from the Padilla case**, n6 **in which many** critics **believe that the administration has played fast and loose with the courts' jurisdiction** **in order to avoid a substantive decision** on a fundamental issue of great importance to all Americans. **Another possible threat to judicial independence involves the position taken** by the administration **regarding the scope of its war powers. In challenging cases brought by individuals charged** as enemy combatants or detained at Guantanamo, **the administration has argued that the President has "inherent powers"** as Commander in Chief under Article II **and that actions he takes pursuant to those powers are essentially not reviewable by courts** or subject to limitation by Congress. n7 **The administration's position in the initial round of Guantanamo cases was that no court anywhere had any jurisdiction to consider** [\*1311] **any claim, be it torture or pending execution**, by any individual held on that American base, which is located on territory under American jurisdiction, for an indefinite period. n8 **The executive branch has also relied on sweeping and often startling assertions of executive authority** in defending the administration's domestic surveillance program, asserting at times as well a congressional resolution for the authorization of the use of military force. To some extent, **such assertions carry with them a challenge to judicial independence**, **as they seem to rely on the proposition that a broad range of cases** - **those that in the administration's view relate to the President's exercise of power** **as Commander in Chief** (and that is a broad range of cases indeed) - **are, in effect, beyond the reach of judicial review**. The full implications of the President's arguments are open to debate, especially since the scope of the inherent power appears, in the view of some current and former administration lawyers, to be limitless. What is clear, however, is that **the administration's stance raises important questions about how the constitutionally imposed system of checks and balances should operate during periods of military conflict**, questions judges should not shirk from resolving.

**That takes out aff solvency.**

Tom **Clarke**, Department of Political Science, Emory University, THE LIMITS OF JUDICIAL INDEPENDENCE, 20**10**, p. 161-162.

In this vein, students of the separation of powers have recognized that **congressional hostility toward the Court may be an important component of the strategic interaction between the institutions**. Noting confrontations between the branches – such as those discussed in Chapter 2 – as well as more regular patterns of interinstituional tension, these scholars have focused on congressional hostility in its role as an institutional threat to exercise power (Segal, Westerland, and Lindquist, Forthcoming; McNollgast 1995, Rosenberg 1992). That is, the focus on **congressional “saber rattling”** – through either committee hearings (Segal, Westerland, and Lindquist, Forthcoming) or even Court-curbing (Rosenberg 1992) – **has been primarily concerned with the potential for Congress to use its constitutional powers to formally sanction the Court**. For example, Friedman and Harvey (2003, 17) note, “[t]here are numerous weapons a sitting Congress can apply against a Supreme Court deemed to be recalcitrant, **including jurisdiction stripping**, budget cutting, Court packing, and even the impeachment of Supreme Court Justices.” **One study** has even briefly **noted the** possible **connection between institutional confrontations and the Court’s *legitimacy***. **“If…[Congress** and the President] **succeed in overriding the Court’s interpretation, the Court will certainly pay a policy** price…**The Court also may bear a cost in terms of its *legitimacy*. Every override of the Court’s interpretation will chip away at its legitimacy** even if only marginally. **Given that the Justices’ ability to achieve their policy goals hinges on their** **legitimacy, because they lack** the **power to enforce their decisions, any erosion of the Court’s legitimacy is a concern**.” (Epstein, Knight Martin 2001, 598)

#### We must move beyond individual testimonies about oppression to broader social activism – that’s the only way to solve.

**Minow 97** [Martha, Not Only For Myself: Identity, Politics, and the Law, Professor of Law @ Harvard, p. 56-57]

Identity politics tends to locate the problem in the identity group rather than the social relations that produce identity groupings.235 **Personal testimony about oppression risks replacing analysis of social structures that produce and maintain it**.236 **Personal testimony is**

**crucial to articulating and maintaining memories, but incapable of providing either analysis of the past or constructive programs for the future. Cornel West observes: "we confine discussions about race in America to the 'problems' black people pose for whites rather than consider what this way of viewing black people reveals about us as a nation."**237 **Serious discussion of race in America, he argues, "must begin not with the problems of black people but with the flaws in American society—flaws rooted in historic inequalities and longstanding cultural stereotypes."**238 Identity politics is likely to reinforce white people's conception of blacks as "them" rather than bringing home people's mutual dependence and relationships. Identity politics tends to produce not only defensiveness among white men, but also makes it easier for white men to abandon and even blame people of color and women of all sorts for their circumstances. More basically, identity politics seems to breed more identity politics. Judith **Butler put the limitations of identity politics bluntly: "You can articulate your identity all you want; you need the damn resources in order to respond to the concrete problems of bodies in pain."**241 **To get the resources, you need to work with others; to care about other bodies in pain, you need to move beyond your own circumstances.** Racial patterns of inequality persist and expand.242 Yet, there remain twice as many whites as blacks below the poverty line.243 **Something more than identity politics is needed to get a grip on these developments and to engage in resistance to them.**244 A politics not of identities but of envisioned alternatives could bridge identity cleavages without demanding that people dissolve their differences in a pot of assimilation that does not absorb all. I do not want to understate the positive aspects of identity politics: valuable conceptions and occasions for being for oneself and forging solidarity with others based on a perception of a shared trait; important challenges to exclusionary practices; and effective questions about exclusionary practices that claim to be inclusive, such as colorblind policies that nonetheless produce virtually all-white beneficiaries. Identity politics also disturbs the repression of historic and continuing group-based injuries. Yet, ironically, **identity politics responds to group-based exclusions by reiterating the very same group boundaries. The problem is not only that responses to oppression reiterate the oppressive strategy of treating identity as fixed. The potentially multiple, fluid qualities of any person's identity seem to evaporate in the assertion of a single trait. Considerable power must be marshalled to accomplish this disappearing act, given the complexity of anyone's identity. And this magical result does not, at the same time, produce purposes or causes that effectively mobilize people against oppression.**

## 2NC

### CP

#### SOP norms fail.

Jeremy Rabkin 13, Professor of Law at the George Mason School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

Even when people are not ambivalent in their desire to embrace American practices, they may not have the wherewithal to do so, given their own resources. That is true even for constitutional arrangements. You might think it is enviable to have an old, well-established constitution, but that doesn’t mean you can just grab it off the shelf and enjoy it in your new democracy. You might think it is enviable to have a broad respect for free debate and tolerance of difference, but that doesn’t mean you can wave a wand and supply it to your own population. We can’t think of most constitutional practices as techniques or technologies which can be imported into different cultures as easily as cell phones or Internet connections.

#### Reject their hyperbolic claims --- multiple checks prevent SOP imbalance

John Yoo 9, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, visiting scholar @ the American Enterprise Institute, former Fulbright Distinguished Chair in Law @ the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, received his J.D. from Yale and his undergraduate degree from Harvard, “Crisis and Command,” Book, p. x-xi

This book is also written out of respect for Congress as well as the President. I have had the honor to serve as general counsel of the Senate Judiciary Committee under the chairmanship of Senator Orrin G. Hatch of Utah, a good and decent man as well as a strward of the Senate. I have the greatest respect for the awesome powers of Congress and the ways in which Congress and the broader political system can check any Chief Executive. It was Congress that forced the resignation of Richard Nixon through hearings, political pressure, spending constraints, and ultimately, the threat of impeachment. Today’s critics of the Presidency underestimate the power of politics to corral any branch of government that goes too far. They give too much credit to appeals to abstract notions of constitutional balance to restrain a truly out-of-control President, or misread active responses to unprecedented challenges as challenges to the Constitution. The hyperbole in such rhetoric is manifest in overwrought yet commonplace invocations of “treason” or “tramplings” of the Constitution. Has the Constitution indeed been trampled on? History provides us with a guide.¶ Certainly, the fear that a President might abuse power for personal gain or to maintain his or her position has haunted America from her birth. Executive power, as the Founding Fathers well knew, always carries the possibility of dictatorship. In their own day, the great Presidents were all accused of wielding power tyrannically. Yet, they were not dictators. They used their executive powers to the benefit of the nation. Once the emergency subsided, presidential power receded and often went into remission under long periods of congressional leadership. When chief executives misused their powers, the political system blocked or eventually ejected the President. No dictator has ever ruled in the United States, yet critics of contemporary presidential power wish to work radical change in current practice out of fear of impending dictatorship.

#### Legitimacy’s inevitable and not key to heg

Brooks and Wohlforth, 9 (Stephen Brooks and William Wohlforth, both are professors of Government at Dartmouth, “Reshaping the world order: how Washington should reform international institutions,” Foreign Affairs, March-April)

FOR ANALYSTS such as Zbigniew Brzezinski and Henry Kissinger, the key reason for skepticism about the United States' ability to spearhead global institutional change is not a lack of power but a lack of legitimacy. Other states may simply refuse to follow a leader whose legitimacy has been squandered under the Bush administration; in this view, the legitimacy to lead is a fixed resource that can be obtained only under special circumstances. The political scientist G.John Ikenberry argues in After Victory that states have been well positioned to reshape the institutional order only after emerging victorious from some titanic struggle, such as the French Revolution, the Napoleonic Wars, or World War I or II. For the neoconservative Robert Kagan, the legitimacy to lead came naturally to the United States during the Cold War, when it was providing the signal service of balancing the Soviet Union. The implication is that today, in the absence of such salient sources of legitimacy, the wellsprings of support for U.S. leadership have dried up for good. But this view is mistaken. For one thing, it overstates how accepted U.S. leadership was during the Cold War: anyone who recalls the Euromissile crisis of the 1980s, for example, will recognize that mass opposition to U.S. policy (in that case, over stationing intermediaterange nuclear missiles in Europe) is not a recent phenomenon. For another, it understates how dynamic and malleable legitimacy is. Legitimacy is based on the belief that an action, an actor, or a political order is proper, acceptable, or natural. An action - such as the Vietnam War or the invasion of Iraq - may come to be seen as illegitimate without sparking an irreversible crisis of legitimacy for the actor or the order. When the actor concerned has disproportionately more material resources than other states, the sources of its legitimacy can be refreshed repeatedly. After all, this is hardly the first time Americans have worried about a crisis of legitimacy. Tides of skepticism concerning U.S. leadership arguably rose as high or higher after the fall of Saigon in 1975 and during Ronald Reagan's first term, when he called the Soviet Union an "evil empire." Even George W. Bush, a globally unpopular U.S. president with deeply controversial policies,oversaw a marked improvement in relations with France, Germany, and India in recent years - even before the elections of Chancellor Angela Merkel in Germany and President Nicolas Sarkozy in France. Of course, the ability of the United States to weather such crises of legitimacy in the past hardly guarantees that it can lead the system in the future. But there are reasons for optimism. Some of the apparent damage to U.S. legitimacy might merely be the result of the Bush administration's approach to diplomacy and international institutions. Key underlying conditions remain particularly favorable for sustaining and even enhancing U.S. legitimacy in the years ahead. The United States continues to have a far larger share of the human and material resources for shaping global perceptions than any other state, as well as the unrivaled wherewithal to produce public goods that reinforce the benefits of its global role. No other state has any claim to leadership commensurate with Washington's. And largely because of the power position the United States still occupies, there is no prospect of a counterbalancing coalition emerging anytime soon to challenge it. In the end, the legitimacy of a system's leader hinges on whether the system's members see the leader as acceptable or at least preferable to realistic alternatives. Legitimacy is not necessarily about normative approval: one may dislike the United States but think its leadership is natural under the circumstances or the best that can be expected. Moreover, history provides abundant evidence that past leading states - such as Spain, France, and the United Kingdom - were able to revise the international institutions of their day without the special circumstances Ikenberry and Kagan cite. Spainfashioned both normative and positive laws to legitimize its conquest of indigenous Americans in the early seventeenth century; France instituted modern concepts of state borders to meet its needs as Europe's preeminent land power in the eighteenth century; and the United Kingdom fostered rules on piracy, neutral shipping, and colonialism to suit its interests as a developing maritime empire in the nineteenth century. As Wilhelm Grewe documents in his magisterial The Epochs of International Law, these states accomplished such feats partly through the unsubtle use of power: bribes, coercion, and the allure oflucrative long-term cooperation. Less obvious but often more important, the bargaining hands of the leading states were often strengthened by the general perception that they could pursue their interests in even less palatable ways - notably, through the naked use of force. Invariably, too, leading states have had the power to set the international agenda, indirectly affecting the development of new rules by defining the problems they were developed to address. Given its naval primacy and global trading interests, the United Kingdom was able to propel the slave trade to the forefront of the world's agenda for several decades after it had itself abolished slavery at home, in 1833. The bottom line is that the UnitedStates today has the necessary legitimacy to shepherd reform of the international system.

### Cap

#### There is a huge profit motive behind private prisons.

Kroll, 13

[Andy, “This Is How Private Prison Companies Make Millions Even When Crime Rates Fall”, 9-19-13, Mother Jones,

<http://www.motherjones.com/mojo/2013/09/private-prisons-occupancy-quota-cca-crime>, RSR]

We are living in boom times for the private prison industry. The Corrections Corporation of America (CCA), the nation's largest owner of private prisons, has seen its revenue climb by more than 500 percent in the last two decades. And CCA wants to get much, much bigger: Last year, the company made an offer to 48 governors to buy and operate their state-funded prisons. But what made CCA's pitch to those governors so audacious and shocking was that it included a so-called occupancy requirement, a clause demanding the state keep those newly privatized prisons at least 90 percent full at all times, regardless of whether crime was rising or falling. Occupancy requirements, as it turns out, are common practice within the private prison industry. A new report by In the Public Interest, an anti-privatization group, reviewed 62 contracts for private prisons operating around the country at the local and state level. In the Public Interest found that 41 of those contracts included occupancy requirements mandating that local or state government keep those facilities between 80 and 100 percent full. In other words, whether crime is rising or falling, the state must keep those beds full. (The report was funded by grants from the Open Society Institute and Public Welfare, according to a spokesman.) All the big private prison companies—CCA, GEO Group, and the Management and Training Corporation—try to include occupancy requirements in their contracts, according to the report. States with the highest occupancy requirements include Arizona (three prison contracts with 100 percent occupancy guarantees), Oklahoma (three contracts with 98 percent occupancy guarantees), and Virginia (one contract with a 95 percent occupancy guarantee). At the same time, private prison companies have supported and helped write "three-strike" and "truth-in-sentencing" laws that drive up prison populations. Their livelihoods depend on towns, cities, and states sending more people to prison and keeping them there.

#### Their belief in operating around social location makes effective coalitions against material problems impossible.

Brown 95—prof at UC Berkely (Wendy, States of Injury, 47-51)

The postmodern exposure of the imposed and created rather than dis- covered character of all knowledges—of the power-surtuscd, struggle-¶48¶produced quality of all truths, including reigning political and scientific ones—simultaneously exposes the groundlessness of discovered norms or visions. It also reveals the exclusionary and regulatory function of these norms: white women who cannot locate themselves in Nancy Hartsock’s account of women’s experience or women s desires, African American women who do not identify with Patricia Hill Collinss account of black women’s ways of knowing, are once again excluded from the Party of Humanism—this time in its feminist variant. ¶Our alternative to reliance upon such normative claims would seem to be engagement in political struggles in which there are no trump cards such as “morality” or “truth."Our alternative, in other words, is to struggle within an amoral political habitat for temporally bound and fully contestable visions of who we are and how we ought to live. Put still another way, postmodernity unnerves feminist theory not merely because it deprives us of uncomplicated subject standing, as Christine Di Stefano suggests, or of settled ground for knowledge and norms, as Nancy Hartsock argues, or of "centered selves and “emancipatory knowledge," as Seyla Bcnhabib avers. Postmodernity unsettles feminism because it erodes the moral ground that the subject, truth, and nor- mativity coproduce in modernity. When contemporary feminist political theorists or analysts complain about the antipolitical or unpolitical nature of postmodern thought—thought that apprehends and responds to this erosion—they arc protesting, inter' aha, a Nictzschcan analysis of truth and morality as fully implicated in and by power, and thereby dplegiti- mated qua Truth and Morality Politics, including politics with passion- ate purpose and vision, can thrive without a strong theory of the subject, without Truth, and without scientifically derived norms—one only need reread Machiavelli, Gramsci, or Emma Goldman to see such a politics flourish without these things. The question is whether fnninist politics can prosper without a moral apparatus, whether feminist theorists and activists will give up substituting Truth and Morality for politics. Are we willing to engage in struggle rather than recrimination, to develop our faculties rather than avenge our subordination with moral and epistemological gestures, to fight for a world rather than conduct process on the existing one? Nictzschc insisted that extraordinary strengths of character and mind would be necessary to operate in thce domain of epistemological and religious nakedness he heralded. But in this heexcessively individualized a challenge that more importantly requires the deliberate development of postmoral and antirelativist political spaces, practices of deliberation, and modes of adjudication.¶49¶The only way through a crisis of space is to invent a new space —Fredric Jameson. “Postmodernism"¶Precisely because of its incessant revelation of settled practices and identi- ties as contingent, its acceleration of the tendency to melt all that is solid into air. what is called postmodernity poses the opportunity to radically sever the problem of the good from the problem of the true, to decide “what we want” rather than derive it from assumptions or arguments about “who we are.”Our capacity to exploit this opportunity positively will be hinged to our success in developing new modes and criteria for political judgment. It will also depend upon our willingness to break certain modernist radical attachments, particularly to Marxism’s promise (however failed) of meticulously articulated connections betwreen a com- prehensive critique of the present and norms for a transformed future—a science of revolution rather than a politics of oneResistance, the practice most widely associated with postmodern polit- ical discourse, responds to without fully meeting the normativity chal- lenge of postmodernity. A vital tactic in much political w’ork as wrcll as for mere survival, resistance by itself does not contain a critique, a vision, or grounds for organized collective efforts to enact either. Contemporary affection for the politics of resistance issues from postmodern criticism’s perennial authority problem: our heightened consciousncss of the will to power in all political “positions” and our wrariness about totalizing an- alyses and visions. Insofar as it eschew’s rather than revisesthese problematic practices, resistance-as-politics does not raise the dilemmas of responsibility and justification entailed in “affirming” political projects and norms. In this respect, like identity politics, and indeed sharing with identity politics an excessively local viewpoint and tendency toward positioning without mapping, the contemporary vogue of resistance is more a symptom of postmodernity’s crisis of political space than a coherent response to it.Resistance goes nowhere in particular, has no inherent attachments, and hails no particular vision; as Foucault makes clear, resistance is an effect of and reaction to power, not an arrogation of it.¶What postmodernity disperses and postmodern feminist politics requires are cultivated political spaces for posing and questioning feminist political norms, for discussing the nature of “the good” for women. Democratic political space is quite undcrtheonzed in contemporary femi- nist thinking, as it is everywhere in latc-twentieth-ccntury political the- ory, primarily bccausc it is so little in evidence. Dissipated by the increasing tcchnologizing of would-be political conversations and pro- cesses, by the erosion of boundaries around specifically political domains¶50¶and activities, and by the decline of movement politics, political spaces are scarcer and thinner today than even in most immediately prior epochs of Western history. In this regard, their condition mirrors the splayed and centrifuged characteristics of postmodern political power. Yet precisely because of postmodernity’s disarming tendencies toward political disori- entation, fragmentation, and technologizing, the creation of spaces where political analyses and norms can be proffered and contested is su- premely important.¶Political space is an old theme in Western political theory, incarnated by the polis practices of Socrates, harshly opposed by Plato in the Repub- lic, redeemed and elaborated as metaphysics by Aristotle, resuscitated as salvation for modernity by Hannah Arendt. jnd given contemporary spin in Jurgen Habermas's theories of ideal speech situations and com- municative rationality. The project of developing feminist postmodern political spaces, while enriched by pieces of this tradition, necessarily also departs from it. In contrast with Aristotle’s formulation, feminist politi- cal spaces cannot define themselves against the private sphere, bodies, reproduction and production, mortality, and all the populations and is- sues implicated in these categories. Unlike Arendt’s, these spaces cannot be pristine, ratified, and policed at their boundaries but are necessarily cluttered, attuned to earthly concerns and visions, incessantly disrupted, invaded, and reconfigured. Unlike Habermas, wc can harbor no dreams of nondistorted communication unsullied by power, or even of a ‘com- mon language,’\* but wc recognize as a permanent political condition par- tiality of understanding and expression, cultural chasms whose nature may be vigilantly identified but rarely “resolved,” and the powers of words and images that evoke, suggest, and connote rather than transmit meanings.42 Our spaces, while requiring some definition and protection, cannot be clean, sharply bounded, disembodied, or permanent: to engage postmodern modes of power and honor specifically feminist knowledges, they must be heterogenous, roving, relatively noninstitutionalized, and democratic to the point of exhaustion.¶Such spaces are crucial for developing the skills and practices of post- modern judgment, addressing the problem of “how to produce a discourse on justicc . . . when one no longer relies on ontology or epistemology.”43 Postmodemity’s dismantling of metaphysical foundations for justice renders us quite vulnerable to domination by technical reason ¶51¶unless we seize the opportunity this erosion also creates to develop democratic processes for formulating postepistemelogical and postontological judgments. Such judgements require learning how to have public conversations with each other, arguing from a vision about the common (“what I want for us") rather than from identity (“who I am”),and from explicitly postulated norms and potential common values rather than false essentialism or unreconstructed private interest.

#### Reformism link - Their focus on political change masks a strategy of reformism that is coopted into replicating captial’s control

Meszaros 6 (Istvan, “Structural Crisis of Politics,” *Monthly Review,* September, Proquest)

In the meantime so many grave problems are crying out for genuine solutions which could be well within our reach. Some of them have been with us for several decades, imposing terrible suffering and sacrifices on millions of people. Colombia is an oustanding example. For forty years the forces of oppression—internal and external, U.S. dominated—tried to suffocate the struggle of the Colombian people, without success. Attempts to reach a negotiated settlement—“with the participation of all social groups, without exception, in order to reconcile the Colombian family,” in the words of Manuel Marulanda Vélez, the leader of FARCEP—have been systematically frustrated.16 As Vélez wrote in an open letter addressed recently to a presidential candidate: “No government, liberal or conservative, produced an effective political solution to the social and armed conflict. The negotiations were used for the purpose of changing nothing, so that everything should remain the same. All of the political schemes of the governments were using the Constitution and the laws as a barrier, to make sure that everything continues the way as we had it before.”17  Thus, when the dominant social interests dictate it, “constitutionali-ty” and the rules of “democratic consensus” are used in Colombia (and elsewhere) as cynical devices for evading and forever postponing the solution of even the most burning issues, no matter how immense might be the scale of suffering imposed, as a result, on the people. And by the same token, in a different social context but under the same kind of deeply embedded structural determinations, even the most blatant and openly admitted violations of established constitutionality are disre-garded, despite the periodic ritual lip service paid to the necessity to respect the constitutional requirements. In this sense, when the Congressional committee investigating the “Irangate Contra Affairs” had concluded that the Reagan administration was responsible for “sub-verting the Law and undermining the Constitution,” absolutely nothing happened to condemn, let alone to remove, the guilty president. And in yet another type of case—as we have seen in the ruling LDP govern-ment’s determination to subvert the Japanese Constitution—when the original constitutional clauses appear to be obstacles to embarking on perilous new military adventures, the dominant social and political interests of the country impose a new legal framework whose principal function is to liquidate the once proclaimed democratic safeguards and turn what was formerly decreed unlawful into arbitrarily institutional-ized “constitutional lawfulness.” Nor should we forget what has been happening in a most adverse, and in its trend dangerously authoritari-an, sense to British and United States constitutionality during the last few years. As I indicated at the beginning, we cannot attribute the chronic prob-lems of our social interchanges to more or less easily corrigible political contingencies. So much is at stake, and we have historically rather lim-ited time at our disposal in order to redress, in a socially sustainable way, the all too obvious grievances of the structurally subordinated social classes. The question of why?—concerning substantive matters, and not simply the contingent personal failures, even when they happen to be serious, as the frequently highlighted instances of widespread political corruption are—cannot be avoided indefinitely. It is necessary to investigate the social causes and deep-seated structural determina-tions at the roots of the disturbing negative trends in politics and the law, in order to be able to explain their stubborn persistence and worsening at the present time. This question of why is what I wish to pursue now.

#### You cannot permute a method – it strips out all of the conceptual theory that allows us both understand the world and to create a praxis to end oppression

Tumino 1 [Stephen, Prof English at Pitt, ““What is Orthodox Marxism and Why it Matters Now More than Ever”, Red Critique, p. online]

Orthodox Marxism has become a test-case of the "radical" today. Yet, what passes for orthodoxy on the left—whether like Smith and Zizek they claim to support it, or, like Butler and Rorty they want to "achieve our country" by excluding it from "U.S. Intellectual life" ("On Left Conservatism"), is a parody of orthodoxy which hybridizes its central concepts and renders them into flexodox simulations. Yet, even in its very textuality, however, the orthodox is a resistance to the flexodox. Contrary to the common-sensical view of "orthodox" as "traditional" or "conformist" "opinions," is its other meaning: ortho-doxy not as flexodox "hybridity," but as "original" "ideas." "Original," not in the sense of epistemic "event," "authorial" originality and so forth, but, as in chemistry, in its opposition to "para," "meta," "post" and other ludic hybridities: thus "ortho" as resistance to the annotations that mystify the original ideas of Marxism and hybridize it for the "special interests" of various groups. The "original" ideas of Marxism are inseparable from their effect as "demystification" of ideology—for example the deployment of "class" that allows a demystification of daily life from the haze of consumption. Class is thus an "original idea" of Marxism in the sense that it cuts through the hype of cultural agency under capitalism and reveals how culture and consumption are tied to labor, the everyday determined by the workday: how the amount of time workers spend engaging in surplus-labor determines the amount of time they get for reproducing and cultivating their needs. Without changing this division of labor social change is impossible. Orthodoxy is a rejection of the ideological annotations: hence, on the one hand, the resistance to orthodoxy as "rigid" and "dogmatic" "determinism," and, on the other, its hybridization by the flexodox as the result of which it has become almost impossible today to read the original ideas of Marxism, such as "exploitation"; "surplus-value"; "class"; "class antagonism"; "class struggle"; "revolution"; "science" (i.e., objective knowledge); "ideology" (as "false consciousness"). Yet, it is these ideas alone that clarify the elemental truths through which theory ceases to be a gray activism of tropes, desire and affect, and becomes, instead, a red, revolutionary guide to praxis for a new society freed from exploitation and injustice. Marx's original scientific discovery was his labor theory of value. Marx's labor theory of value is an elemental truth of Orthodox Marxism that is rejected by the flexodox left as the central dogmatism of a "totalitarian" Marxism. It is only Marx's labor theory of value, however, that exposes the mystification of the wages system that disguises exploitation as a "fair exchange" between capital and labor and reveals the truth about this relation as one of exploitation. Only Orthodox Marxism explains how what the workers sell to the capitalist is not labor, a commodity like any other whose price is determined by fluctuations in supply and demand, but their labor-power—their ability to labor in a system which has systematically "freed" them from the means of production so they are forced to work or starve—whose value is determined by the amount of time socially necessary to reproduce it daily. The value of labor-power is equivalent to the value of wages workers consume daily in the form of commodities that keep them alive to be exploited tomorrow. Given the technical composition of production today this amount of time is a slight fraction of the workday the majority of which workers spend producing surplus-value over and above their needs. The surplus-value is what is pocketed by the capitalists in the form of profit when the commodities are sold. Class is the antagonistic division thus established between the exploited and their exploiters. Without Marx's labor theory of value one could only contest the after effects of this outright theft of social labor-power rather than its cause lying in the private ownership of production. The flexodox rejection of the labor theory of value as the "dogmatic" core of a totalitarian Marxism therefore is a not so subtle rejection of the principled defense of the (scientific) knowledge workers need for their emancipation from exploitation because only the labor theory of value exposes the opportunism of knowledges (ideology) that occult this exploitation. Without the labor theory of value socialism would only be a moral dogma that appeals to the sentiments of "fairness" and "equality" for a "just" distribution of the social wealth that does the work of capital by naturalizing the exploitation of labor under capitalism giving it an acceptable "human face."

### Case

#### Extinction comes first

**BOSTROM 11** (Nick, Prof. of Philosophy at Oxford, The Concept of Existential Risk (Draft), <http://www.existentialrisk.com/concept.html>)

Holding probability constant, risks become more serious as we move toward the upper-right region of figure 2. For any fixed probability, existential risks are thus more serious than other risk categories. But just how much more serious might not be intuitively obvious. One might think we could get a grip on how bad an existential catastrophe would be by considering some of the worst historical disasters we can think of—such as the two world wars, the Spanish flu pandemic, or the Holocaust—and then imagining something just a bit worse. Yet if we look at global population statistics over time, we find that these horrible events of the past century fail to register (figure 3). [Graphic Omitted] Figure 3: World population over the last century. Calamities such as the Spanish flu pandemic, the two world wars, and the Holocaust scarcely register. (If one stares hard at the graph, one can perhaps just barely make out a slight temporary reduction in the rate of growth of the world population during these events.) But even this reflection fails to bring out the seriousness of existential risk. What makes existential catastrophes especially bad is not that they would show up robustly on a plot like the one in figure 3, causing a precipitous drop in world population or average quality of life. Instead, their significance lies primarily in the fact that they would destroy the future. The philosopher Derek Parfit made a similar point with the following thought experiment: I believe that if we destroy mankind, as we now can, this outcome will be much worse than most people think. Compare three outcomes: (1) Peace. (2) A nuclear war that kills 99% of the world’s existing population. (3) A nuclear war that kills 100%. (2) would be worse than (1), and (3) would be worse than (2). Which is the greater of these two differences? Most people believe that the greater difference is between (1) and (2). I believe that the difference between (2) and (3) is very much greater. … The Earth will remain habitable for at least another billion years. Civilization began only a few thousand years ago. If we do not destroy mankind, these few thousand years may be only a tiny fraction of the whole of civilized human history. The difference between (2) and (3) may thus be the difference between this tiny fraction and all of the rest of this history. If we compare this possible history to a day, what has occurred so far is only a fraction of a second. (10: 453-454) To calculate the loss associated with an existential catastrophe, we must consider how much value would come to exist in its absence. It turns out that the ultimate potential for Earth-originating intelligent life is literally astronomical. One gets a large number even if one confines one’s consideration to the potential for biological human beings living on Earth. If we suppose with Parfit that our planet will remain habitable for at least another billion years, and we assume that at least one billion people could live on it sustainably, then the potential exist for at least 1018 human lives. These lives could also be considerably better than the average contemporary human life, which is so often marred by disease, poverty, injustice, and various biological limitations that could be partly overcome through continuing technological and moral progress. However, the relevant figure is not how many people could live on Earth but how many descendants we could have in total. One lower bound of the number of biological human life-years in the future accessible universe (based on current cosmological estimates) is 1034 years.[10] Another estimate, which assumes that future minds will be mainly implemented in computational hardware instead of biological neuronal wetware, produces a lower bound of 1054 human-brain-emulation subjective life-years (or 1071 basic computational operations).(4)[11] If we make the less conservative assumption that future civilizations could eventually press close to the absolute bounds of known physics (using some as yet unimagined technology), we get radically higher estimates of the amount of computation and memory storage that is achievable and thus of the number of years of subjective experience that could be realized.[12] Even if we use the most conservative of these estimates, which entirely ignores the possibility of space colonization and software minds, we find that the expected loss of an existential catastrophe is greater than the value of 1018 human lives. This implies that the expected value of reducing existential risk by a mere one millionth of one percentage point is at least ten times the value of a billion human lives. The more technologically comprehensive estimate of 1054 human-brain-emulation subjective life-years (or 1052 lives of ordinary length) makes the same point even more starkly. Even if we give this allegedly lower bound on the cumulative output potential of a technologically mature civilization a mere 1% chance of being correct, we find that the expected value of reducing existential risk by a mere one billionth of one billionth of one percentage point is worth a hundred billion times as much as a billion human lives. One might consequently argue that even the tiniest reduction of existential risk has an expected value greater than that of the definite provision of any “ordinary” good, such as the direct benefit of saving 1 billion lives. And, further, that the absolute value of the indirect effect of saving 1 billion lives on the total cumulative amount of existential risk—positive or negative—is almost certainly larger than the positive value of the direct benefit of such an action.[13]

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#### War powers debates are good—without topicality, there’s a competitive incentive to avoid them and the neg ground associated—

Kurr 2013 – Ph.D. student in the Communication Arts & Sciences program at Pennsylvania State University and a coach for the Penn State Debate Society (9/5, UVA Miller Center & CEDA Public Debate Series, “Bridging Competitive Debate and Public Deliberation on Presidential War Powers”, http://public.cedadebate.org/node/14)

Taken together, the connection between tournament competition and a public collaboration reorients the pedagogical function of debate. Gordon Mitchell and his colleagues comment on this possibility, “The debate tournament site’s potential to work as a translational pipeline for scholarly research presents unique opportunities for colleges and universities seeking to bolster their institutional infrastructure for undergraduate research” (Mitchell et al, 2010, p. 15). Indeed, the debate series affords competitors the opportunity to become part of the discussion and inform policymakers about potential positions, as opposed to the traditional reactionary format of hosting public debates at the season’s end. Empirically, these events had the effect of “giv[ing] voice to previously buried arguments” that “subject matter experts felt reticent to elucidate because of their institutional affiliations” (Mitchell, 2010, p. 107). Given the timeliness of the topic, these debates provide a new voice into the ongoing deliberation over war powers and help make the fruits of competitive research have a public purpose. The second major function concerns the specific nature of deliberation over war powers. Given the connectedness between presidential war powers and the preservation of national security, deliberation is often difficult. Mark Neocleous describes that when political issues become securitized; it “helps consolidate the power of the existing forms of social domination and justifies the short-circuiting of even the most democratic forms.” (2008, p. 71). Collegiate debaters, through research and competitive debate, serve as a bulwark against this “short-circuiting” and help preserve democratic deliberation. This is especially true when considering national security issues. Eric English contends, “The success … in challenging the dominant dialogue on homeland security politics points to efficacy of academic debate as a training ground.” Part of this training requires a “robust understanding of the switch-side technique” which “helps prevent misappropriation of the technique to bolster suspect homeland security policies” (English et. al, 2007, p. 224). Hence, competitive debate training provides foundation for interrogating these policies in public. Alarmism on the issues of war powers is easily demonstrated by Obama’s repeated attempts to transfer detainees from Guantanamo Bay. Republicans were able to launch a campaign featuring the slogan, “not in my backyard” (Schor, 2009). By locating the nexus of insecurity as close as geographically possible, the GOP were able to instill a fear of national insecurity that made deliberation in the public sphere not possible. When collegiate debaters translate their knowledge of the policy wonkery on such issues into public deliberation, it serves to cut against the alarmist rhetoric purported by opponents. In addition to combating misperceptions concerning detainee transfers, the investigative capacity of collegiate debate provides a constant check on governmental policies. A new trend concerning national security policies has been for the government to provide “status updates” to the public. On March 28, 2011, Obama gave a speech concerning Operation Odyssey Dawn in Libya and the purpose of the bombings. Jeremy Engels and William Saas describe this “post facto discourse” as a “new norm” where “Americans are called to acquiesce to decisions already made” (2013, p. 230). Contra to the alarmist strategy that made policy deliberation impossible, this rhetorical strategy posits that deliberation is not necessary. Collegiate debaters researching war powers are able to interrogate whether deliberation is actually needed. Given the technical knowledge base needed to comprehend the mechanism of how war powers operate, debate programs serve as a constant investigation into whether deliberation is necessary not only for prior action but also future action. By raising public awareness, there is a greater potential that “the public’s inquiry into potential illegal action abroad” could “create real incentives to enforce the WPR” (Druck, 2010, p. 236). While this line of interrogation could be fulfilled by another organization, collegiate debaters who translate their competitive knowledge into public awareness create a “space for talk” where the public has “previously been content to remain silent” (Engels & Saas, 2013, p. 231). Given the importance of presidential war powers and the strategies used by both sides of the aisle to stifle deliberation, the import of competitive debate research into the public realm should provide an additional check of being subdued by alarmism or acquiescent rhetorics. After creating that space for deliberation, debaters are apt to influence the policies themselves. Mitchell furthers, “Intercollegiate debaters can play key roles in retrieving and amplifying positions that might otherwise remain sedimented in the policy process” (2010, p. 107). With the timeliness of the war powers controversy and the need for competitive debate to reorient publicly, the CEDA/Miller Center series represents a symbiotic relationship that ought to continue into the future. Not only will collegiate debaters become better public advocates by shifting from competition to collaboration, the public becomes more informed on a technical issue where deliberation was being stifled. As a result, debaters reinvigorate debate.

#### Topical fairness requirements are key to effective dialogue—monopolizing strategy and prep makes the discussion one-sided and subverts any meaningful neg role

Galloway 7—Samford Comm prof (Ryan, Contemporary Argumentation and Debate, Vol. 28, 2007)

Debate as a dialogue sets an argumentative table, where all parties receive a relatively fair opportunity to voice their position. Anything that fails to allow participants to have their position articulated denies one side of the argumentative table a fair hearing. The affirmative side is set by the topic and fairness requirements. While affirmative teams have recently resisted affirming the topic, in fact, the topic selection process is rigorous, taking the relative ground of each topic as its central point of departure.¶ Setting the affirmative reciprocally sets the negative. The negative crafts approaches to the topic consistent with affirmative demands. The negative crafts disadvantages, counter-plans, and critical arguments premised on the arguments that the topic allows for the affirmative team. According to fairness norms, each side sits at a relatively balanced argumentative table.¶ When one side takes more than its share, competitive equity suffers. However, it also undermines the respect due to the other involved in the dialogue. When one side excludes the other, it fundamentally denies the personhood of the other participant (Ehninger, 1970, p. 110). A pedagogy of debate as dialogue takes this respect as a fundamental component. A desire to be fair is a fundamental condition of a dialogue that takes the form of a demand for equality of voice. **Far from** being **a banal request for links** to a disadvantage, fairness is a demand for respect, a demand to be heard, a demand that a voice backed by literally months upon **months of preparation**, research, and critical thinking not be silenced.¶ Affirmative cases that suspend basic fairness norms **operate to exclude** particular negative strategies. Unprepared, one side comes to the argumentative table unable to meaningfully participate in a dialogue. They are unable to “understand what ‘went on…’” and are left to the whims of time and power (Farrell, 1985, p. 114). Hugh Duncan furthers this line of reasoning:¶ Opponents not only tolerate but honor and respect each other because in doing so they enhance their own chances of thinking better and reaching sound decisions. Opposition is necessary because it sharpens thought in action. We assume that argument, discussion, and talk, among free an informed people who subordinate decisions of any kind, because it is only through such discussion that we reach agreement which binds us to a common cause…If we are to be equal…relationships among equals must find expression in many formal and informal institutions (Duncan, 1993, p. 196-197).¶ **Debate compensates for the exigencies of the world by offering a framework that maintains equality for the sake of the conversation** (Farrell, 1985, p. 114).¶ For example, an affirmative case on the 2007-2008 college topic might defend neither state nor international action in the Middle East, and yet claim to be germane to the topic in some way. The case essentially denies the arguments that state action is oppressive or that actions in the international arena are philosophically or pragmatically suspect. Instead of allowing for the dialogue to be modified by the interchange of the affirmative case and the negative response, the affirmative subverts any meaningful role to the negative team, preventing them from offering effective “counter-word” and undermining the value of a meaningful exchange of speech acts. **Germaneness and other substitutes for topical action do not accrue the dialogical benefits** of topical advocacy.

#### Arguments don’t injure people, but policies do—voting aff on this is much closer to censorship because it says we can’t even introduce ideas without harming them—that's a tactical move to shut down debates

Amanda Anderson 6, Andrew W. Mellon Professor of Humanities and English at Brown University, Spring 2006, “Reply to My Critic(s),” Criticism, Vol. 48, No. 2, p. 281-290

Probyns piece is a mixture of affective fallacy, argument by authority, and bald ad hominem. There's a pattern here: precisely the tendency to personalize argument and to foreground what Wendy Brown has called "states of injury." Probyn says, for example, that she "felt ostracized by the books content and style." Ostracized? Argument here is seen as directly harming persons, and this is precisely the state of affairs to which I object. Argument is not injurious to persons. Policies are injurious to persons and institutionalized practices can alienate and exclude. But argument itself is not directly harmful; once one says it is, one is very close to a logic of censorship. The most productive thing to do in an open academic culture (and in societies that aspire to freedom and democracy) when you encounter a book or an argument that you disagree with is to produce a response or a book that states your disagreement. But to assert that the book itself directly harms you is tantamount to saying that you do not believe in argument or in the free exchange of ideas, that your claim to injury somehow damns your opponent's ideas. When Probyn isn't symptomatic, she's just downright sloppy. One could work to build up the substance of points that she throws out the car window as she screeches on to her next destination, but life is short, and those with considered objections to liberalism and proceduralism would not be particularly well served by the exercise. As far as I can tell, Probyn thinks my discussion of universalism is of limited relevance (though far more appealing when put, by others, in more comfortingly equivocating terms), but she's certain my critique of appeals to identity is simply not able to accommodate the importance of identity in social and political life. As I make clear throughout the book, and particularly in my discussion of the headscarf debate in France, identity is likely to be at the center of key arguments about life in plural democracies; my point is not that identity is not relevant, but simply that it should not be used to trump or stifle argument. In closing, I'd like to speak briefly to the question of proceduralism's relevance to democratic vitality. One important way of extending the proceduralist arguments put forth by Habeimas is to work on how institutions and practices might better promote participation in democratic life. The apathy and nonparticipation plaguing democratic institutions in the United States is a serious problem, and can be separated from the more romantic theoretical investments in a refusal to accept the terms of what counts as argument, or in assertions of inassimilable difference. With respect to the latter, which is often glorified precisely as the moment when politics or democracy is truly occurring, I would say, on the contrary democracy is not happening then-rather, the limits or deficiencies of an actually existing democracy are making themselves felt. Acknowledging struggle, conflict, and exclusion is vital to democracy, but insisting that exclusion is not so much a persistent challenge for modern liberal democracies but rather inherent to the modern liberal-democratic political form as such seems to me precisely to remain stalled in a romantic critique of Enlightenment. It all comes down to a question of whether one wants to work with the ideals of democracy or see them as essentially normative in a negative sense: this has been the legacy of a certain critique of Enlightenment, and it is astonishingly persistent in the left quarters in the academy. One hears it clearly when Robbins makes confident reference to liberalisms tendency to ignore "the founding acts of violence on which a social order is based." One encounters it in the current vogue for the work of Giorgio Agamben and Carl Schmitt. Saying that a state of exception defines modernity or is internal to the law itself may help to sharpen your diagnoses of certain historical conditions, but if absolutized as it is in these accounts, it gives you nothing but a negative diagnostic and a compensatory flight to a realm entirely other-the kind of mystical, Utopian impulse that flees from these conditions rather than confronts and fights them on terms that derive from the settled-if constantly evolving-normative basis of democratic modernity. If one is outraged by the flagrant disregard of democratic procedures in the current U.S. political regime, then one needs to be able to coherently say why democratic procedures matter, what principles underwrite them, and what historical movements and institutions have helped us to secure and support them. Argument as a critical practice and as a key component of democratic institutions and public debate has a vital role to play in such a task.